

Bobby Jindal
GOVERNOR



Kathy H. Kliebert
SECRETARY

State of Louisiana
Department of Health and Hospitals
Office of the Secretary

December 7, 2015

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Chuck Kleckley, Speaker of the House
The Honorable David Heitmeier, Chair, Senate Committee on Health and Welfare
The Honorable Scott Simon, Chair, House Committee on Health and Welfare
The Honorable Jack Donahue, Chair, Senate Finance Committee
The Honorable James R. "Jim" Fannin, Chairman, House Appropriations Committee

FROM: Kathy H. Kliebert
Secretary

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Adult Mental Health Services – Covered Services and Recipient Qualifications.

The Department published a Notice of Intent on this proposed Rule in the October 20, 2015 issue of the *Louisiana Register* (Volume 41, Number 10). A public hearing was held on November 25, 2015 at which only Department of Health and Hospitals staff were present. No oral testimony or written comments were received regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the January 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification; and
3. the public hearing attendance roster.

KHK/WJR/CEC

Attachments (3)

NOTICE OF INTENT

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

**Adult Mental Health Services
Covered Services and Recipient Qualifications
(LAC 50:XXXIII.Chapters 61-67)**

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend LAC 50:XXXIII.Chapters 61-67 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 Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amended the provisions governing adult behavioral health services in order to ensure the provider certification, assessment, and reevaluation criteria are in alignment with the approved Medicaid State Plan (*Louisiana Register*, Number 41, Volume 2).

The department promulgated an Emergency Rule which amended the provisions governing adult mental health services in order to: 1) provide Medicaid coverage and reimbursement for licensed mental health professional services and mental health rehabilitative services to adult members enrolled in Bayou

Health and terminate the behavioral health services rendered under the 1915(i) State Plan authority; 2) establish the recipient qualifications criteria; and 3) revise the assessment and plan of care requirements (*Louisiana Register*, Volume 41, Number 10). This proposed Rule is being promulgated to continue the provisions of the December 1, 2015 Emergency Rule.

TITLE 50

**PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXXIII. Behavioral Health Services
Subpart 7. Adult Mental Health Services**

Chapter 61. General Provisions

§6101. Introduction

A. The Medicaid Program provides coverage under the Medicaid State Plan for mental health services rendered to adults with mental health disorders. These services shall be administered under the authority of the Department of Health and Hospitals, 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. The mental health 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 and Hospitals, Bureau of Health Services Financing, LR 38:358 (February 2012), LR 42:

§6103. Recipient Qualifications

A. Individuals, 21 years of age and older, who meet Medicaid eligibility and clinical criteria established in §6103.B, shall qualify to receive adult mental health services.

B. Qualifying individuals shall be eligible to receive the following adult mental health services.

1. Licensed mental health professional services are available to adults enrolled in Bayou Health, provided the services are determined to be medically necessary in accordance with LAC 50:I.1101.

a. - b. Repealed.

2. Mental health rehabilitation services are available to adults enrolled in Bayou Health, provided the services are determined to be medically necessary in accordance with LAC 50:I.1101, and the enrollee meets the following conditions:

a. currently presents with mental health symptoms that are consistent with a diagnosable mental disorder specified within the *Diagnostic and Statistical Manual of Mental*

Disorders (DSM-V) or the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10);

i. - iii. Repealed.

b. has at least a score of two on the Level of Care Utilization System (LOCUS); and

c. has a condition for which services are therapeutically appropriate.

3. - 4. Repealed.

C. An adult who has previously met the criteria stated in §6103.B.2.a-c, but who now meets a composite LOCUS score of one and needs subsequent medically necessary services for stabilization and maintenance, shall be eligible for adult mental health services.

D. An adult with a primary diagnosis of a substance use disorder without an additional co-occurring qualifying mental health diagnosis shall not meet the criteria for mental health rehabilitation 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 and Hospitals, Bureau of Health Services Financing, LR 38:358 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:378 (February 2015), LR 42:

Chapter 63. Services

§6301. General Provisions

A. All mental health 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. ...

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.

4. Repealed.

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

E. ...

F. Services may be provided at a facility, in the community, or in the individual's place of residence as outlined in the plan of care. Services may be furnished in a nursing facility only in accordance with policies and procedures issued 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 and Hospitals, Bureau of Health Services Financing, LR 38:359 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:378 (February 2015), LR 42:

§6303. Assessments

A. For mental health rehabilitation services, each enrollee shall be assessed and have a plan of care (POC) developed.

B. Assessments shall be performed by a licensed mental health practitioner (LMHP).

C. Assessments must be performed at least every 365 days or as needed any time there is a significant change to the enrollee's circumstances.

D. 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 38:359 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:378 (February 2015), LR 42:

§6305. Plan of Care

A. Each enrollee who receives adult mental health rehabilitation services shall have a POC developed based upon the assessment.

B. The individualized POC shall be developed according to the criteria established by the department and in accordance with the provisions of this Rule, the provider manual and other notices or directives issued by the department.

1. The POC is reviewed at least every 365 days and as needed when there is significant change in the individual's circumstances.

C. The plan of care shall be developed by a case manager who acts as an advocate for the individual and is a source of information for the individual and the team.

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 38:359 (February 2012), LR 42:

§6307. Covered Services

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

1. therapeutic services, including diagnosis and treatment delivered by LMHPs;
2. - 3. ...

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;

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

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.

C. - C.4. 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 38:359 (February 2012), LR 42:

Chapter 65. Provider Participation

§6501. Provider Responsibilities

A. Each provider of adult mental health services shall enter into a contract with one or more of the managed care organizations in order to receive reimbursement for Medicaid covered services.

B. All services shall be delivered in accordance with federal and state laws and regulations, the provisions of this Rule, the provider manual, and other notices or directives issued by the department. The provider shall create and maintain documents to substantiate that all requirements are met.

C. Providers of adult mental health services shall ensure that all services are authorized and any services that exceed established limitations beyond the initial authorization are approved for re-authorization prior to service delivery.

D. Anyone providing adult mental health services must be certified by the department, or its designee, in addition to operating within their scope of practice license.

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

1. a copy of the plan of care and treatment plan;
2. - 5. ...
6. the goals of the plan of care and/or treatment plan.

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 38:360 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:378 (February 2015), LR 42:

Chapter 67. Reimbursement

§6701. Reimbursement Methodology

A. Effective for dates of service on or after December 1, 2015, the department, or its fiscal intermediary, shall make monthly capitation payments to the MCOs.

B. 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 and Hospitals, Bureau of Health Services Financing, LR 38:360 (February 2012), LR 42:

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 impact on family functioning, stability and autonomy as described in R.S. 49:972 by increasing

access to Medicaid covered adult mental health 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 by reducing the financial burden on families for mental health services as a result of increased access to Medicaid covered adult mental health 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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, November 25, 2015 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.

Kathy H. Kliebert

Secretary

Bobby Jindal
GOVERNOR



Kathy H. Kliebert
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
November 25, 2015
9:30 a.m.

RE: Adult Mental Health Services
Covered Services and Recipient Qualifications
Docket # 112515-01
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted November 25, 2015 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in black ink, appearing to read "Cedric Clark", written over a horizontal line.

Cedric Clark
Medicaid Policy and
Compliance Section

11/25/15
Date

DHH/BHSF PUBLIC HEARING

Topic - Adult Mental Health Services – Covered Services and Recipient Qualifications

Date – November 25, 2015

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Yolanda Ellis	Department of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	(225) 342 - 5042	DHH - Medicaid Policy & Compliance
2.			
3.			
4.			
5.			
6.			



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

December 7, 2015

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Chuck Kleckley, Speaker of the House
The Honorable David Heitmeir, Chair, Senate Committee on Health and Welfare
The Honorable Scott Simon, Chair, House Committee on Health and Welfare
The Honorable Jack Donahue, Chair, Senate Finance Committee
The Honorable James R. "Jim" Fannin, Chairman, House Appropriations Committee

FROM: Kathy H. Kliebert
Secretary 

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Facility Need Review – Outpatient Abortion Facilities.

The Department published a Notice of Intent on this proposed Rule in the October 20, 2015 issue of the *Louisiana Register* (Volume 41, Number 10). A public hearing was held on November 25, 2015 at which Department of Health and Hospitals staff and a citizen, Shelley Moore, were present. No oral testimony was given, nor written correspondence received, regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the January 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification; and
3. the public hearing attendance roster.

KHK/WJR/KAH

Attachments (3)

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Facility Need Review
Outpatient Abortion Facilities
(LAC 48:I.Chapter 125)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.12501 and §12503 and to repeal §12524 in the Medical Assistance Program as authorized by R.S. 36:254. 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 Hospitals, Bureau of Health Services Financing amended the Rule governing the Facility Need Review Program (FNR) in order to adopt provisions for the inclusion of outpatient abortion facilities in the FNR process (*Louisiana Register*, Volume 38, Number 12).

The department promulgated an Emergency Rule which amended the provisions governing the Facility Need Review Program to remove outpatient abortion facilities from the FNR process (*Louisiana Register*, Volume 41, Number 7). The department subsequently amended the provisions of the July 1, 2015 Emergency Rule in order to correct the formatting of §12503 as a result of the promulgation of a January 20, 2015 Rule governing the FNR process (*Louisiana Register*, Volume 41, Number 10). This

proposed Rule is being promulgated to continue the provisions of the October 20, 2015 Emergency Rule.

Title 48

**PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 5. Health Planning**

Chapter 125. Facility Need Review

Subchapter A. General Provisions

§12501. Definitions

A. ...

Outpatient abortion facility—Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1961 (August 2012), LR 41:135 (January 2015), LR 42:

§12503. General Information

A. - B. ...

C. The department will also conduct a FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

1. - 3. ...

4. hospice providers or inpatient hospice facilities;

and

5. pediatric day health care facilities.

6. Repealed.

D. - F.4. ...

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers, ICFs/ID, ADHC providers, hospice providers, and pediatric day health care centers that meet one of the following conditions:

1. - 3. ...

4. hospice providers that were licensed, or had a completed initial licensing application submitted to the department, by March 20, 2012; or

5. pediatric day health care providers that were licensed by the department before March 1, 2014, or an entity that meets all of the following requirements:

a. has a building site or plan review approval for a PDHC facility from the Office of State Fire Marshal by

March 1, 2014;

b. has begun construction on the PDHC facility by April 30, 2014, as verified by a notarized affidavit from a licensed architect submitted to the department, or the entity had a fully executed and recorded lease for a facility for the specific use as a PDHC facility by April 30, 2014, as verified by a copy of a lease agreement submitted to the department;

c. submits a letter of intent to the department's Health Standards Section by April 30, 2014, informing the department of its intent to operate a PDHC facility; and

d. becomes licensed as a PDHC by the department no later than December 31, 2014.

6. - 6.d. Repealed.

H. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended

LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1961 (August 2012), LR 41:136 (January 2015), LR 42:

Subchapter B. Determination of Bed, Unit, Facility or Agency Need

§12524. Outpatient Abortion Facilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1961 (August 2012), repealed LR 42:

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 no impact on family functioning, stability and autonomy as described in R.S. 49:972.

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 no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

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 Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821, or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, November 25, 2015 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.

Kathy H. Kliebert

Secretary

Bobby Jindal
GOVERNOR



Kathy H. Kliebert
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
November 25, 2015
9:30 a.m.

RE: Facility Need Review
Outpatient Abortion Facilities
Docket # 112515-03
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted November 25, 2015 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in black ink, appearing to read "Cedric Clark", written over a horizontal line.

Cedric Clark
Medicaid Policy and
Compliance Section

11/25/15
Date

DHH/BHSF PUBLIC HEARING

Topic - Facility Need Review - Outpatient Abortion Facilities

Date - November 25, 2015

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Yolanda M. Ellis	Department of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	(225) 342-5042	DHH - Medicaid Policy & Compliance
2. Shelly Moore	13609 Alba Dr. Baker, LA 70714	(225) 921-91690	Citizen
3. Kay. Dey	628 N. 4th Street BTR, LA 70802	225-342-9319	DHH
4. Ted Kleamencakis	"	225-342-5122	DHH
5. Brenda Blanchard	"	(225) 342-2471	NSS
6.			



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

December 7, 2015

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Chuck Kleckley, Speaker of the House
The Honorable David Heitmeier, Chair, Senate Committee on Health and Welfare
The Honorable Scott Simon, Chair, House Committee on Health and Welfare
The Honorable Jack Donahue, Chair, Senate Finance Committee
The Honorable James R. "Jim" Fannin, Chairman, House Appropriations Committee

FROM: Kathy H. Kliebert
Secretary

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Home and Community-Based Services Waivers - Residential Options Waiver - Reserved Capacity Group.

The Department published a Notice of Intent on this proposed Rule in the October 20, 2015 issue of the *Louisiana Register* (Volume 41, Number 10). A public hearing was held on November 25, 2015 at which only Department of Health and Hospitals staff were present. No oral testimony was given; however, written comments were received regarding this proposed Rule from Nell Hahn with the Advocacy Center.

The Department anticipates adopting the Notice of Intent as a final Rule in the January 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification;
3. the public hearing attendance roster;
4. the summary of all written comments received by the agency; and
5. the agency response to Nell Hahn.

KHK/WJR/RKA

Attachments (5)

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Service Financing
and
Office for Citizens with Developmental Disabilities**

**Home and Community-Based Services Waivers
Residential Options Waiver
Reserved Capacity Group
(LAC 50:XXI.16107,16343,16705 and 16901)**

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.16107, \$16343, \$16705 and \$16901 under 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 Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the Residential Options Waiver (ROW) in order to revise the provisions governing the allocation of waiver opportunities and the delivery of services in order to provide greater clarity, reduce reimbursement rates, adopt criteria for crisis diversion, revise the provisions governing the individuals who may be offered a waiver opportunity, and to clarify the provisions

governing the developmental disabilities request for services registry (*Louisiana Register*, Volume 41, Number 10). The department now proposes to amend the provisions governing the ROW to create a reserved capacity group to allow individuals with developmental disabilities who receive services in the Community Choices Waiver or the Adult Day Health Care Waiver programs to transition into the ROW.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waivers

Subpart 13. Residential Options Waiver

Chapter 161. General Provisions

§16107. Programmatic Allocation of Waiver Opportunities

A. - C. ...

D. Individuals with intellectual and developmental disabilities (I/DD) who have a statement of approval (SOA) through the Office for Citizens with Developmental Disabilities (OCDD), and who currently receive services via the Office of Aging and Adult Services (OAAS) Community Choices Waiver (CCW) or Adult Day Health Care (ADHC) Waiver programs shall be placed in a reserved capacity group to allow for transition into the ROW.

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, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:xxx (October 2015), LR 42:

Chapter 163. Covered Services

§16343. Adult Day Health Care Services

A. Adult day health care (ADHC) services shall be furnished as specified in the POC and at an ADHC facility in a non-institutional, community-based setting encompassing health, medical, and social services needed to ensure the optimal functioning of the participant.

B. ADHC services include:

1. transportation between the participant's place of residence and the ADHC, in accordance with licensing standards;
2. assistance with activities of daily living;
3. health and nutrition counseling;
4. an individualized exercise program;
5. an individualized goal-directed recreation program;
6. health education classes;
7. individualized health/nursing services; and
8. meals.

a. Meals shall not constitute a full nutritional regimen (three meals per day), but shall include a minimum of two snacks and a hot, nutritious lunch.

C. The number of participants included in the service per day shall be determined by the facility's licensed capacity and attendance. The average capacity per facility is 49 participants.

D. Nurses shall be involved in the participant's service delivery as specified in the POC or as needed. The ADHC shall develop an individualized service plan based on the participant's POC. If the individualized service plan requires certain health and nursing services, the nurse on staff shall ensure that the services are delivered while the participant is at the ADHC facility.

E. ADHC services shall be provided no more than 10 hours per day and no more than 50 hours per week.

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 and the Office for Citizens with Developmental Disabilities, LR 42:

Chapter 167. Provider Participation

§16701. General Provisions

A. - F. ...

G. Providers of ADHC services must:

1. be licensed as ADHC providers by the state of Louisiana in accordance with R.S. 40:2120.41-2120.47;
2. comply with all of the department's rules and regulations; and
3. be enrolled as an ADHC provider with the Medicaid program.

a. ADHC facility staff shall meet the requirements of department rules and regulations, as well as state licensing provisions.

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, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:xxxx (October 2015), LR 42:

Chapter 169. Reimbursement

§16901. Reimbursement Methodology

A. - A.5.f. ...

6. support coordination;

7. - 7.a. ...

b. micro-enterprise; and

8. adult day health care.

B. - L.1.d. ...

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, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:1049 (April 2013), LR 41: xxx (October 2015), LR 42:

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 may have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by improving access to, and the quality of, Residential Options Waiver 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 may 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 by reducing health care cost to families through improved access to waiver 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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, November 25, 2015 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.

Kathy H. Kliebert

Secretary

Bobby Jindal
GOVERNOR



Kathy H. Kliebert
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
November 25, 2015
9:30 a.m.

RE: Home and Community-Based Services Waivers
Residential Options Waiver
Reserved Capacity Group
Docket # 112515-04
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted November 25, 2015 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.


Cedric Clark
Medicaid Policy and
Compliance Section

11/25/15
Date

DHH/BHSF PUBLIC HEARING

Topic – Home and Community –Based Services Waivers – Residential Options Waiver –
Reserved Capacity Group

Date – November 25, 2015

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Yolanda Ellis	Department of Health & Hospitals 628 N. 4 th Street Baton Rouge, LA 70802	(225) 342-5042	DHH - Medicaid Policy & Compliance
2. Jeannathan Anderson	DHH - OCDD 628 N. 4 th Street Baton Rouge LA 70802	(225) 342-5647	DHH - OCDD
3.			
4.			
5.			
6.			

SUMMARY OF WRITTEN COMMENTS

Proposed Rule: Home and Community-Based Services Waivers – Residential Options Waiver – Reserved Capacity Group
Public Hearing Date: November 25, 2015
Docket No. : 11252015-04 (November 2015)
Conducted By: Department of Health and Hospitals, Bureau of Health Services Financing Staff

Written Comments Received From	Mode of Receipt	Summary of Comments
Nell Hahn with the Advocacy Center	Email to DHH Executive Staff	<p>Has concerns about issues that are not addressed in this Rule:</p> <ul style="list-style-type: none"> • assuring that someone with a developmental disability who is in a nursing home can leave the nursing home, if they choose, using a Residential Options Waiver • amending the ROW rules to permit workers who live with the recipient to continue to reside with the worker and provide waiver services • how people with developmental disabilities will access the ROW waiting list...people calling Options in Long Term Care, the 232-HELP line, or other means of accessing the Community Choices Waiver and LT-PCS, would be seamlessly transferred to speak with someone who make sure that they apply and are considered timely for the ROW <p>These changes must be made to avoid discrimination against individuals with developmental disabilities in nursing homes; to assure that people have no disruption in their services (as was represented in letters sent to them by the Department); and to assure that people with developmental disabilities will have access to alternatives to institutional care.</p>



State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

December 7, 2015

Nell Hahn
Advocacy Center
600 Jefferson Street, Suite 812
Lafayette, LA 70501

Dear Ms. Hahn:

**RE: Notice of Intent for Home and Community-Based Services Waivers
Residential Options Waiver – Reserved Capacity Group**

This letter is in response to your correspondence regarding the Notice of Intent for Home and Community-Based Services Waivers – Residential Options Waiver – Reserved Capacity Group which was published in the October 20, 2015 edition of the *Louisiana Register*.

The Notice of Intent proposes to amend the provisions governing the Residential Options Waiver (ROW) to create a reserved capacity group to allow individuals with developmental disabilities who receive services in the Community Choices Waiver or the Adult Day Health Care Waiver programs to transition into the ROW.

I would like to thank you for taking the time to provide comments regarding the proposed Rule. The Department has reviewed your comments and has determined that your concerns can be addressed without requiring changes to the proposed Rule. This is beneficial in that, per the Administrative Procedures Act (R.S. 49:950 et seq), any substantive changes to the proposed Rule compels the Department to publish a substantive changes notice and conduct a substantive changes public hearing, which would delay implementation of the Rule's provisions by an additional two to four months.

Hence, I am responding to each of the areas of concern voiced in your letter by taking the following actions.

“assuring that someone with a developmental disability who is in a nursing home can leave the nursing home, if they choose, using a Residential Options Waiver”

The Department agrees with this recommendation and will accomplish it through an amendment to the waiver. There is nothing in Rule which prevents implementation through a waiver amendment.

“amending the ROW rules to permit workers who live with the recipient to continue to reside with the worker and provide waiver services”

The Office of Aging and Adult Services (OAAS) has identified four to six individuals impacted by this prohibition. OAAS and the Office for Citizens with Developmental Disabilities (OCDD) will, in the short term, work with these individuals to provide their personal care services under the ROW Companion Care services. Companion Care does not have a prohibition against a family member serving as a worker and living in the same home as the participant. OCDD will consider a separate promulgation to address the ILS prohibition in the ROW.

“how people with developmental disabilities will access the ROW waiting list through transfer from the Options in Long-Term Care and 232-HELP line to speak with someone who makes sure that they apply and are considered timely for ROW”

This is a procedural change that is addressed through communication with, and coordination through, the Department’s contractor, Xerox, and the local governing entities that serve as the point of entry for developmental disability services.

The Department appreciates your interest in the Medicaid administrative rulemaking process, and hopes that you will continue to work with us as we strive to improve health care outcomes for Louisiana citizens.

Should you have any questions or comments regarding Medicaid administrative rulemaking activity, you may contact Veronica Dent, Medicaid Program Manager, at 225-342-3238 or by email to Veronica.Dent@la.gov.

Sincerely,



J. Ruth Kennedy
Medicaid Director

JRK/DAB/VYD

c: Hugh Eley
Lou Ann Owen
Mark A. Thomas
Robin Wagner



State of Louisiana
Department of Health and Hospitals
Office of the Secretary

December 7, 2015

MEMORANDUM

TO: The Honorable John A. Alario, President, Louisiana Senate
The Honorable Chuck Kleckley, Speaker of the House
The Honorable David Heitmeir, Chair, Senate Committee on Health and Welfare
The Honorable Scott Simon, Chair, House Committee on Health and Welfare
The Honorable Jack Donahue, Chair, Senate Finance Committee
The Honorable James R. "Jim" Fannin, Chairman, House Appropriations Committee

FROM: Kathy H. Kliebert
Secretary

RE: Oversight Report on Bureau of Health Services Financing Proposed Rulemaking

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Nursing Facilities – Non-State Governmental Organizations – Supplemental Payments.

The Department published a Notice of Intent on this proposed Rule in the October 20, 2015 issue of the *Louisiana Register* (Volume 41, Number 10). A public hearing was held on November 25, 2015 at which only the Department of Health and Hospitals staff were present. No oral testimony was given, nor written correspondence received, regarding this proposed Rule.

The Department anticipates adopting the Notice of Intent as a final Rule in the January 20, 2016 issue of the *Louisiana Register*.

The following documents are attached:

1. a copy of the Notice of Intent;
2. the public hearing certification; and
3. the public hearing attendance roster.

KHK/WJR/KAH

Attachments (3)

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Nursing Facilities
Non-State Governmental Organizations
Supplemental Payments
(LAC 50:II.20029)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:II.20029 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 Hospitals, Bureau of Health Services Financing provides Medicaid reimbursement to non-state, government-owned or operated nursing facilities for long-term care services provided to Medicaid recipients.

The department now proposes to amend the provisions governing the reimbursement methodology for nursing facilities in order to establish supplemental Medicaid payments for qualifying nursing facilities, owned or operated by a non-state governmental organization (NSGO), that have entered into an agreement with the department to participate. This action is being taken to promote the health and welfare of Medicaid recipients, ensure sufficient provider participation in the Nursing Facilities Program, and maintain adequate recipient access to nursing facility services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20029. Supplemental Payments

A. Non-State Governmental Organization Nursing Facilities

1. Effective for dates of service on or after January 20, 2016, any nursing facility that is owned or operated by a non-state governmental organization (NSGO), and that has entered into an agreement with the Department to participate, shall qualify for a Medicaid supplemental payment adjustment, in addition to the uniform Medicaid rates paid to nursing facilities. The only qualifying nursing facilities effective for January 20, 2016 are:

- a. Gueydan Memorial Guest Home;
- b. Lane Memorial Hospital Geriatric Long-Term Care (LTC);
- c. LaSalle Nursing Home;
- d. Natchitoches Parish Hospital LTC Unit; and
- e. St. Helena Parish Nursing Home.

2. The supplemental Medicaid payment to a non-state, government-owned or operated nursing facility shall not exceed the facility's upper payment limit (UPL) pursuant to 42 CFR 447.272.

3. Payment Calculations. The Medicaid supplemental payment adjustment shall be calculated as follows. For each state

fiscal year (SFY), the Medicaid supplemental payment shall be calculated as the difference between:

a. the amount that the department reasonably estimates would have been paid to nursing facilities that are owned or operated by a NSGO using the Medicare Resource Utilization Groups (RUGs) prospective payment system. For each Medicaid resident that is in a nursing facility on the last day of a calendar quarter, the minimum data set (MDS) assessment that is in effect on that date is classified using the Medicare RUGs system. The Medicare rate applicable to the Medicare RUG, adjusted by the Medicare geographic wage index, equals the Medicaid resident's estimated Medicare rate. A simple average Medicare rate is determined for each nursing facility by summing the estimated Medicare rate for each Medicaid resident in the facility and dividing by total Medicaid residents in the facility; and

b. the Medicaid per diem rate for nursing facilities that are owned or operated by a NSGO. The Medicaid rate shall be adjusted to include laboratory, radiology, and pharmacy services to account for program differences in services between Medicaid and Medicare. The statewide average of laboratory, radiology, and pharmacy services is calculated using Medicaid cost report data.

4. Each participating nursing facility's upper payment limit (UPL) gap shall be determined as the difference between the estimated Medicare rate calculated in §20029.A.3.a and the adjusted Medicaid rate calculated in §20029.A.3.b.

a. Each facility's UPL gap is multiplied by the Medicaid days to arrive at its supplemental payment amount. Medicaid days are taken from the Medicaid cost report.

5. Frequency of Payments and Calculations

a. For each calendar quarter, an estimated interim supplemental payment will be calculated as described in this Section utilizing the latest Medicare RUGs and payment rates and Medicaid cost reports and available Medicaid payment rates. Payments will be made to each nursing facility that is owned or operated by a NSGO and that has entered into an agreement with the department to participate in the supplemental payment program.

b. Following the completion of the state's fiscal year, the final supplemental payment amount for the state fiscal year just ended will be calculated. These calculations will be based on the final Medicare RUGs and payment rates and the most recently reviewed Medicaid cost reports and Medicaid payment rates that cover the just ended state fiscal year period. The final supplemental payment calculations will be compared to the estimated interim supplemental payments, and the difference, if positive, will be paid to the NSGO, and if negative, collected from the NSGO.

6. No payment under this Section is dependent on any agreement or arrangement for provider or related entities to donate money or services to a governmental entity.

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 42:

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 no impact on family functioning, stability and autonomy as described in R.S. 49:972.

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 no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

In compliance with House Concurrent Resolution 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 enhance the provider's ability to provide the same level of service since this proposed Rule establishes supplemental payments to providers for the same services they already render.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, November 25, 2015 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.

Kathy H. Kliebert

Secretary

Bobby Jindal
GOVERNOR



Kathy H. Kliebert
SECRETARY

State of Louisiana
Department of Health and Hospitals
Bureau of Health Services Financing

PUBLIC HEARING CERTIFICATION
November 25, 2015
9:30 a.m.

RE: Nursing Facilities
Non-State Government Organizations
Supplemental Payments
Docket # 112515-05
Department of Health and Hospitals
State of Louisiana

CERTIFICATION

In accordance with LA R.S. 49:950 et seq., the attached public hearing agenda, together with one digital recording of the public hearing conducted November 25, 2015 in Baton Rouge, Louisiana constitute the official record of the above-referenced public hearing.

A handwritten signature in black ink, appearing to read "Cedric Clark", written over a horizontal line.

Cedric Clark
Medicaid Policy and
Compliance Section

11/25/15
Date

DHH/BHSF PUBLIC HEARING

Topic – Nursing Facilities – Non-State Government Organizations – Supplemental Payments

Date – November 25, 2015

PERSONS IN ATTENDANCE

Name	Address	Telephone Number	AGENCY or GROUP you represent
1. Yolanda Ellis	Department of Health & Hospitals 628 N. 4th Street Baton Rouge, LA 70802	(225) 342-5042	DHH - Medicaid Policy & Compliance
2. MARY J. MASON	"	225-342-4130	DHH - MVA Rate Setting & Audit
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