

NOTICE OF INTENT

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

**Healthy Louisiana and Coordinated System of Care Waiver
Behavioral Health Directed Payments
(LAC 50:XXXIII.503 and 703)**

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to adopt LAC 50:XXXIII.503 and 703 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, Bureau of Health Services Financing and the Office of Behavioral Health propose to adopt provisions in the Healthy Louisiana and Coordinated System of Care Waiver governing directed payments for fee schedule and value-based payment arrangement for providers of behavioral health and home and community-based services and the grievance and appeal process for these providers.

Title 50

**PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXXIII. Behavioral Health Services
Subpart 1. Healthy Louisiana and Coordinated System of Care
Waiver**

Chapter 5. Reimbursement

§503. Directed Payments

A. Provider Directed Payments

1. Subject to written approval by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), the Department of Health (hereafter referred to as "the department" and/or "LDH") shall provide directed payments to qualifying providers that participate in the Healthy Louisiana Medicaid managed care program or Coordinated System of Care (CSoC) waiver, in accordance with the applicable section 438.6(c) preprint(s) approved by CMS, federal regulations, and departmental requirements. Each CMS approved directed payment arrangement is effective for one Healthy Louisiana Medicaid managed care or CSoC contract rating period, unless otherwise approved by CMS.

2. Qualifying Provider

a. High fidelity wraparound agencies (WAA) and wraparound facilitators (WF), WF supervisors, WAA coaches, and WAA administrators that meet the criteria specified in the applicable section 438.6(c) preprint approved by CMS and departmental requirements; or

b. Peer support specialists, supervisors, trainers, and administrators employed by the family support organization (FSO) that meet the criteria specified in the

applicable section 438.6(c) preprint approved by CMS and departmental requirements; or

c. Licensed mental health practitioners (LMHPs) and psychiatrists that provide behavioral health outpatient services and that meet the criteria specified in the applicable section 438.6(c) preprint approved by CMS and departmental requirements.

3. The Healthy Louisiana Medicaid managed care organization (MCO) and CSoC contractor shall assign qualifying providers to provider classes based upon criteria specified in the applicable section 438.6(c) preprint(s) approved by CMS, in accordance with departmental requirements.

a. Qualifying providers shall have no right to an administrative appeal regarding the qualifying provider criteria or determination of which providers meet the qualifying provider criteria.

4. The MCO and CSoC contractor shall utilize a payment process, whereby directed payments will be calculated and paid out based on the data and methodology specified in the applicable section 438.6(c) preprint(s) approved by CMS, in accordance with departmental requirements.

a. Qualifying providers shall have no right to an administrative appeal regarding calculation of directed payments or measurement rates.

5. Based upon the methodology specified in the applicable section 438.6(c) preprint(s) approved by CMS, in accordance with departmental requirements, the department shall cause directed payments to be paid in a single upfront lump sum payment to the MCOs; and payments shall be paid to the CSoc contractor within 30 days of receipt of invoice(s), on a retrospective basis.

a. Funding for the directed payments is only available during the time period in the applicable section 438.6(c) preprint(s) approved by CMS or until payments are exhausted, whichever comes first.

6. In accordance with the applicable section 438.6(c) preprint(s) approved by CMS and departmental requirements, directed payments must be based on actual utilization and delivery of services during the applicable contract period.

a. Within six months of the end of the rating period, the MCOs and CSoc contractor shall perform a reconciliation as specified in the applicable section 438.6(c) preprint approved by CMS or as otherwise dictated in accordance with departmental requirements.

i. Qualifying providers shall have no right to an administrative appeal regarding any issue related to

reconciliation, including, but not limited to, the timing, amount of the reconciliation, and process.

7. If a qualifying provider is subject to a reconciliation, the qualified provider shall pay all amounts owed to the MCO or CSoC contractor, in accordance with departmental requirements.

a. In addition to all other available remedies, the MCO and the CSoC contractor has the authority to offset all amounts owed by a qualifying provider due to a reconciliation against any payment owed to the qualifying provider, including, but not limited to, any payment owed by the MCOs or CSoC contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:245 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 49:

Chapter 7. Grievance and Appeals Process

§703. Provider Grievance and Appeal Process

A. If the provider is filing a grievance or appeal on behalf of the member, the provider shall adhere to the provisions outlined in §701 of this Chapter.

B. The MCO and CSoC contractor must have a grievance and appeals process for claims, medical necessity, and contract

disputes for providers in accordance with the contract and department issued guidance.

1. The MCO and CSoC contractor shall establish and maintain a procedure for the receipt and prompt internal resolution of all provider initiated grievances and appeals as specified in the contract and department issued guidance.

2. The grievance and appeals procedures, and any changes thereto, must be approved in writing by the department prior to their implementation.

3. Notwithstanding any MCO, CSoC contractor, or department grievance and appeal process, nothing contained in any document, including, but not limited to Rule or contract, shall preclude a provider's right to pursue relief through a court of appropriate jurisdiction.

4. The MCO and CSoC contractor shall report on a monthly basis all grievance and appeals filed and resolutions in accordance with the terms of the contract and department issued guidance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:245 and Title XIX of the Social Security Act

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing, LR 49:

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

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

Small Business Analysis

In compliance with the Small Business Protection Act, 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 by providing state directed payments to qualifying providers.

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 this proposed Rule increases payments to providers for the services they already render.

Public Comments

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on May 30, 2023.

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 May 10, 2023. If the criteria set forth

in R.S. 49:961(B) (1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on May 25, 2023 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 May 10, 2023. 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.

Stephen R. Russo

LDH Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

**RULE TITLE: Healthy Louisiana and Coordinated System of Care
Waiver
Behavioral Health Directed Payments**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule will increase state costs by approximately \$942 for FY 22-23 and \$9,114,700 for FY 23-24. It is anticipated that \$942 (\$486 SGF

and \$486 FED) will be expended in FY 22-23 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 implementation of this proposed rule will increase revenue collections by approximately \$486 for FY 22-23 and \$19,885,300 for FY 23-24. It is anticipated that \$486 will be collected in FY 22-23 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)

This proposed rule adopts provisions in the Healthy Louisiana and Coordinated System of Care Waiver governing directed payments for fee schedule and value-based payment arrangement for providers of behavioral health and home and community-based services (HCBS) and the grievance and appeal process for these providers. Implementation of this proposed rule will benefit qualifying behavioral health and HCBS providers, as it is anticipated to increase payments for these

services by approximately \$29,000,000 for FY 23-24. Since the directed payment models must be approved by CMS every year, at this time, the Department is only authorized to make these payments through June 2024.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.