

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Medicaid Eligibility
Incurred Medical Expense Deductions
(LAC 50:III.16105)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to repeal the May 20, 2003 Rule governing incurred medical expenses in the Medicaid Program and proposes to adopt LAC 50:III.16105 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.

Pursuant to 42 CFR 435.725, medical expenses not subject to third party payment that are incurred by nursing facility residents, including Medicare and other health insurance premiums, deductibles or coinsurance charges and necessary medical or remedial care recognized under state law, but not covered under the Medicaid State Plan are budgeted in the determination of the patient liability for nursing facility care.

In compliance with 42 CFR 435.725, the Department of Health and Hospitals, Bureau of Health Services Financing currently allows deductions for incurred medical expenses in the determination of the patient liability to the nursing facility. The department has now determined that it is necessary to repeal the May 20, 2003 Rule

governing incurred medical expense deductions. This proposed Rule will also revise these provisions in order to impose reasonable limits on incurred medical expense deductions, and repromulgate the provisions in a codified format for inclusion in the *Louisiana Administrative Code*.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 9. Long-Term Care Eligibility

Chapter 161. General Provisions

§16105. Incurred Medical Expense Deductions

A. Allowable Deductions. The following criteria shall apply to all incurred medical expense deductions.

1. The deductions must be for an expense incurred by a nursing facility resident who is eligible for Medicaid vendor payment to the nursing facility.

2. Each deduction must be for a service or an item prescribed by a medical professional (e.g., a physician, a dentist, an optometrist, etc.) as medically necessary, and approved by the attending physician to be included as part of the facility's plan of care for the resident.

B. Non-Allowable Deductions. Deductions will not be allowed for the following incurred medical expenses:

1. expenses payable under Medicaid, except when documentation is presented to verify the expense was denied by the Medicaid program due to service limitations;

2. expenses for services, equipment or supplies which are not medically necessary;

3. expenses for services, equipment or supplies provided as part of the nursing facility reimbursement rate; or

4. monthly fees for pre-paid medical or dental service plans including but not limited to those referred to as "concierge plans."

C. Reasonable Limits. The following reasonable limits apply to incurred medical and remedial expense deductions.

1. The deduction shall be made at the lessor of:

a. 80 percent of the provider's billed charges;

b. the Medicaid fee schedule; or

c. 80 percent of the Louisiana Region 99 Par

Medicare fee schedule.

2. Deductions for medical and remedial care expenses incurred as a result of the imposition of a transfer of assets penalty period is limited to zero.

D. Incurred medical expense deduction amounts will be evaluated annually for consideration of increases in the cost of medical or remedial services and supplies.

E. Nursing facilities shall not enter into profit sharing agreements with other providers for any services, supplies or equipment provided for under the incurred medical expense deductions.

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 or 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 Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, May 26, 2016 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.

Rebekah E. Gee MD, MPH

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing
Statement: Robert Andrepont Dept.: Health and Hospitals
Phone: 342-8769 Office: Bureau of Health Services
Financing

Return Address: P.O. Box 91030 Rule Title: Medicaid Eligibility
Baton Rouge, LA Incurred Medical Expense
Deductions

Date Rule Takes Effect: July 20, 2016

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

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

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic cost of \$270 for FY 15-16, and savings of \$210,156 for FY 16-17 and \$228,713 for FY 17-18. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 15-16 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.26 percent in FY 16-17 and 62.45 percent in FY 17-18.

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 \$270 for FY 15-16 and decrease collections by approximately \$346,697 for FY 16-17 and \$380,376 for FY 17-18. It is anticipated that \$270 will be expended in FY 15-16 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.26 percent in FY 16-17 and 62.45 percent in FY 17-18.

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

This proposed Rule amends the provisions governing Medicaid financial eligibility in order to incorporate reasonable limits on incurred medical expense deductions in long-term care financial eligibility determinations, and to promulgate these provisions in a codified format for inclusion in the Louisiana Administrative Code. It is anticipated that implementation of this proposed rule will reduce programmatic expenditures in the Medicaid program by approximately \$556,853 for FY 16-17 and \$609,089 for FY 17-18.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.



Signature of Agency Head
or Designee

Even Brant, Staff Director

Legislative/Fiscal Officer
or Designee

Jen Steele,
Interim Medicaid Director

Typed name and Title of
Agency Head or Designee

4/8/16

Date of Signature

Bhadkan Ford

DHH/BHSF Budget Head

04/08/16

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed Rule amends the provisions governing Medicaid financial eligibility in order to incorporate reasonable limits on incurred medical expense deductions in long-term care financial eligibility determinations, and to promulgate these provisions in a codified format for inclusion in the Louisiana Administrative Code.

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

Pursuant to 42 CFR 435.725, medical expenses not subject to third party payment that are incurred by nursing facility residents, including Medicare and other health insurance premiums, deductibles or coinsurance charges and necessary medical or remedial care recognized under state law, but not covered under the Medicaid State Plan are budgeted in the determination of the patient liability for nursing facility care.

In compliance with 42 CFR 435.725, the Department of Health and Hospitals, Bureau of Health Services Financing currently allows deductions for incurred medical expenses in the determination of the patient liability to the nursing facility. The department has now determined that it is necessary to adopt provisions imposing reasonable limits on incurred medical expense deductions, and to promulgate these provisions in a codified format for inclusion in the Louisiana Administrative Code.

- 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.

No, this proposed rule will result in a reduction in programmatic expenditures by approximately \$540 for FY 15-16, \$556,853 for FY 16-17 and \$609,089 for FY 17-18. In FY 15-16, \$540 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) _____ If yes, attach documentation.
(b) _____ If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 15-16	FY 16-17	FY 17-18
PERSONAL SERVICES			
OPERATING EXPENSES	\$540	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES		(\$556,853)	(\$609,089)
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$540	(\$556,853)	(\$609,089)

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 reductions in programmatic expenditures in the Medicaid program. In FY 15-16, \$540 is included 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 15-16	FY 16-17	FY 17-18
STATE GENERAL FUND	\$270	(\$210,156)	(\$228,713)
SELF-GENERATED			
FEDERAL FUND	\$270	(\$346,697)	(\$380,376)
OTHER (Specify)			
Total	\$540	(\$556,853)	(\$609,089)

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 15-16	FY 16-17	FY 17-18
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$270	(\$346,697)	(\$380,376)
LOCAL FUNDS			
Total	\$270	(\$346,697)	(\$380,376)

*Specify the particular fund being impacted

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

The amounts reflected above are the estimated reductions in the federal share of programmatic expenditures for the Medicaid program. In FY 15-16, \$270 is included for the federal expense for promulgation of this proposed rule and the final rule.

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

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

This proposed Rule amends the provisions governing Medicaid financial eligibility in order to incorporate reasonable limits on incurred medical expense deductions in long-term care financial eligibility determinations, and to promulgate these provisions in a codified format for inclusion in the Louisiana Administrative Code.

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

It is anticipated that implementation of this proposed rule will reduce programmatic expenditures in the Medicaid program by approximately \$556,853 for FY 16-17 and \$609,089 for FY 17-18.

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.

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.