

NOTICE OF INTENT

Department of Health and Hospitals  
Bureau of Health Services Financing

Administrative Procedures  
Tribal Consultation Process  
(LAC 50:I.105)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:I.105 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.

Federal regulations at §1902(a)(73) of the Social Security Act (the Act) requires states in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular, ongoing basis from designees of Indian health programs, whether operated by the Indian Health Service (HIS), tribes or tribal organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA) or Urban Indian Organizations under the Indian Health Care Improvement Act (IHCIA). Section 2107(e)(I) of the Act was also amended to apply these requirements to the Children's Health Insurance Program (CHIP). Consultation is required concerning Medicaid and CHIP matters having a direct impact on Indian health programs and Urban Indian Organizations.

In compliance with the provisions of §§1902(a)(73) and 2107(e)(I), the Department of Health and Hospitals, Bureau of Health Services Financing submitted the required Medicaid State Plan Amendment (SPA) under transmittal number (TN) 12-13 in June 2012 and secured federal approval of the Medicaid Program's tribal consultation process from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). The tribal consultation process must be completed for all Medicaid State Plan, waiver, and CHIP submissions to CMS.

CMS has now determined that LA SPA TN 12-13 needs to be amended in order to clarify the regulations governing the provisions relative to waiver submissions, and has directed the department to submit a corresponding SPA to make the necessary revisions. In compliance with CMS' directive, the department proposes to adopt provisions governing the tribal consultation process in the Medicaid Program and to promulgate these provisions in a codified format for inclusion in the *Louisiana Administrative Code*. This proposed rule will also satisfy the technical requirements for federal public notice for submission of the corresponding SPA.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part I. Administration**

#### **Subpart 1. General Provisions**

#### **Chapter 1. Administrative Procedures**

#### **§105. Tribal Consultation Process**

A. Pursuant to §1902(a)(73) and §2107(e)(I) of the Social Security Act, the Medicaid Program hereby establishes a process to seek advice on a regular, ongoing basis from designees of the state's federally-recognized Indian tribal organizations and Indian health programs about Medicaid and Children's Health Insurance Program matters that may have a direct impact on Indian health programs and tribal organizations.

B. The department shall comply with the technical requirements for providing verification of the tribal consultation process to the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) when changes to the Medicaid Program are submitted through:

1. State Plan amendments;
2. waivers, including:
  - a. newly proposed submissions;
  - b. amendments;
  - c. extensions;
  - c. renewals; and
  - d. waiver terminations.

C. In accordance with the approved Medicaid State Plan governing the tribal consultation process, the Medicaid Program will periodically provide a summary, which includes the changes being made by the Medicaid Program, to the federally-recognized Louisiana tribal organizations to initiate the tribal consultation process.

1. Tribal organizations will have 30 days to respond with any comments, unless the date for submission of the changes to CMS becomes critical and needs to be expedited. Expedited submissions will have a 7-day comment period. This notification and comment period applies to all State Plan and waiver submissions.

2. If comments are received, they will be forwarded to the State Medicaid Director, or his/her designee, for further consideration. If no comments are received within the 30- or 7-day time frame, the Medicaid Program will make the assumption the tribes agree with the provisions in the proposed State Plan and waiver documents and proceed accordingly.

D. The tribal comment period must expire prior to the submission of State Plan and waiver documents to CMS.

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, April 28, 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: Dee Budgewater  
Phone: 342-1325

Dept.: Health and Hospitals  
Office: Bureau of Health Services  
Financing

Return  
Address: P.O. Box 91030  
Baton Rouge, LA

Rule Title: Administrative Procedures  
Tribal Consultation Process

Date Rule Takes Effect: June 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.

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

I. *It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 15-16. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed rule and the final rule.*

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS  
(Summary)

*It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 15-16. It is anticipated that \$324 will be collected in FY 15-16 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 OR  
NON-GOVERNMENTAL GROUPS (Summary)

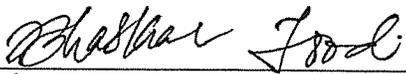
*This proposed Rule adopts provisions governing the federally-mandated tribal consultation process in the Medicaid Program, and promulgates the provisions in a clear and concise manner for inclusion in the Louisiana Administrative Code. It is anticipated that implementation of this proposed rule will have no economic cost or benefit to the Medicaid Program for FY 15-16, FY 16-17 and FY 17-18.*

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

*This rule has no known effect on competition and employment.*

  
\_\_\_\_\_  
Signature of Agency Head  
or Designee

Jen Steele, Interim Medicaid Director  
Typed name and Title of  
Agency Head or Designee

  
\_\_\_\_\_  
DHH/BHSF Budget Head

Evan Brasseaux, Staff Director  
Legislative Fiscal Officer  
or Designee

3/10/16  
Date of Signature

03/10/16  
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 adopts provisions governing the federally-mandated tribal consultation process in the Medicaid Program, and promulgates the provisions in a clear and concise manner 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.

*Federal regulations at §1902(a)(73) of the Social Security Act (the Act) requires states in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular, ongoing basis from designees of Indian health programs, whether operated by the Indian Health Service (HIS), tribes or tribal organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA) or Urban Indian Organizations under the Indian Health Care Improvement Act (IHCIA). Section 2107(e)(1) of the Act was also amended to apply these requirements to the Children's Health Insurance Program (CHIP). Consultation is required concerning Medicaid and CHIP matters having a direct impact on Indian health programs and Urban Indian Organizations.*

*In compliance with the provisions of §§1902(a)(73) and 2107(e)(1), the Department of Health and Hospitals, Bureau of Health Services Financing submitted the required Medicaid State Plan Amendment (SPA) under transmittal number (TN) 12-13 in June 2012 and secured federal approval of the Medicaid Program's tribal consultation process from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). The tribal consultation process must be completed for all Medicaid State Plan, waiver, and CHIP submissions to CMS.*

*CMS has now determined that LA SPA TN 12-13 needs to be amended in order to clarify the regulations governing the provisions relative to waiver submissions, and has directed the department to submit a corresponding SPA to make the necessary revisions. In compliance with CMS' directive, the department proposes to adopt provisions governing the tribal consultation process in the Medicaid Program and to promulgate these provisions in a codified format for inclusion in the Louisiana Administrative Code. This proposed rule will also satisfy the technical requirements for federal public notice for submission of the corresponding SPA.*

- 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. It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 15-16. It is anticipated that \$648 will be expended in FY 15-16 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    | \$648        | \$0        | \$0        |
| PROFESSIONAL SERVICES |              |            |            |
| OTHER CHARGES         |              |            |            |
| REPAIR & CONSTR.      |              |            |            |
| POSITIONS (#)         |              |            |            |
| <b>TOTAL</b>          | <b>\$648</b> | <b>\$0</b> | <b>\$0</b> |

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.

*In FY 15-16, \$648 will be spent for the state's administrative expense for promulgation of this proposed rule and the final rule.*

3. Sources of funding for implementing the proposed rule or rule change.

| Source             | FY 15-16     | FY 16-17   | FY 17-18   |
|--------------------|--------------|------------|------------|
| STATE GENERAL FUND | \$324        | \$0        | \$0        |
| SELF-GENERATED     |              |            |            |
| FEDERAL FUND       | \$324        | \$0        | \$0        |
| OTHER (Specify)    |              |            |            |
| <b>Total</b>       | <b>\$648</b> | <b>\$0</b> | <b>\$0</b> |

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             | \$324        | \$0        | \$0        |
| LOCAL FUNDS               |              |            |            |
| <b>Total</b>              | <b>\$324</b> | <b>\$0</b> | <b>\$0</b> |

*\*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.

*In FY 15-16, \$324 will be collected for the federal share of the administrative 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 adopts provisions governing the federally-mandated tribal consultation process in the Medicaid Program, and promulgates the provisions in a clear and concise manner 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 have no economic cost or benefit to the Medicaid Program for FY 15-16, FY 16-17 and 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.

*This rule has no known effect on competition and employment.*