

2016 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 4

BY REPRESENTATIVE IVEY

MEDICAID: Amends administrative rules to provide for a Medicaid expansion cost containment program

1 A CONCURRENT RESOLUTION

2 To amend the Department of Health and Hospitals rule (Chapter 9 of Subpart 1 of Part III
3 of Title 50 of the Louisiana Administrative Code) which provides relative to
4 eligibility for the medical assistance program of this state known commonly as
5 Medicaid, and to direct the office of the state register to print the amendments in the
6 Louisiana Administrative Code.

7 WHEREAS, from state Fiscal Year 2007-2008 to state Fiscal Year 2015-2016, the
8 total annual operating budget of this state decreased by eleven and nine tenths percent, while
9 total expenditures on the state's Medicaid program increased by forty and nine tenths percent
10 and state general fund expenditures on the program increased by ninety-four and seven
11 tenths percent; and

12 WHEREAS, Medicaid remains the largest single item in Louisiana's operating
13 budget; and

14 WHEREAS, at over eight billion three hundred eighty million dollars, Medicaid
15 comprises thirty-four and two tenths percent of Louisiana's total operating budget in the
16 present state Fiscal Year, representing a significant increase in Medicaid spending since state
17 Fiscal Year 2007-2008 when the program comprised twenty-one and five tenths percent of
18 the state's operating budget; and

19 WHEREAS, in a decision announced on June 28, 2012, the United States Supreme
20 Court in *National Federation of Independent Business Et Al. v. Sebelius, Secretary of Health*

1 *and Human Services, Et Al.* held that the penalty provided in the ACA for a state's
2 nonparticipation in Medicaid expansion is unconstitutionally coercive, thereby rendering
3 participation in the expansion as optional for each state; and

4 WHEREAS, Medicaid expansion in Louisiana would result in over forty percent of
5 the state's population being enrolled in Medicaid, and would thus exacerbate the problem of
6 uncontrolled costs in this entitlement program; and

7 WHEREAS, cost containment in the increasingly unaffordable Medicaid program
8 is an urgent priority of this state.

9 THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that in
10 consideration of the foregoing and of the provisions of R.S. 49:969, which provide that the
11 legislature, by concurrent resolution, may suspend, amend, or repeal any rule adopted by a
12 state department, agency, board, or commission, Chapter 9 of Subpart 1 of Part III of Title
13 50 of the Louisiana Administrative Code is hereby amended to read as follows:

14 Part III. Eligibility

15 Subpart 1. General Administration

16 * * *

17 Chapter 9. Financial Eligibility and Cost Containment

18 Subchapter A. Medicaid Expansion Cost Containment

19 §901. Medicaid expansion cost containment; enrollment reductions corresponding
20 to FMAP decreases

21 A. Definitions

22 ACA and Affordable Care Act – the following acts of congress, collectively:

- 23 1. The Patient Protection and Affordable Care Act (Public Law 111-148).
- 24 2. The Health Care and Education Reconciliation Act (Public Law 111-152).

25 Federal medical assistance percentage and FMAP – the rate which
26 determines the federally financed share of total expenditures of a state for services
27 to Medicaid enrollees in a given year in accordance with Section 1905(b) of the
28 Social Security Act.

1 Medicaid expansion – an expansion of Medicaid eligibility standards of a
2 state to conform with those provided in the Affordable Care Act.

3 Newly eligible adult – an adult who becomes eligible for the Medicaid
4 program exclusively through Medicaid expansion, and who would not otherwise be
5 eligible for Medicaid.

6 B. Notwithstanding any provision of this Title to the contrary, the bureau
7 shall implement a Medicaid cost containment program beginning on January 1 of the
8 calendar year following the year in which Medicaid expansion becomes effective in
9 this state. The bureau shall develop and implement the cost containment program
10 in accordance with the provisions of this Section.

11 C. The cost containment program shall annually reduce the number of newly
12 eligible adults enrolled in Medicaid in proportion to the decrease in the FMAP of the
13 corresponding year for newly eligible adults, as provided more specifically below.

14 1. Unless the conditions of Subsection D of this Section are met, the annual
15 FMAPs for newly eligible adults upon which the annual reductions in Medicaid
16 enrollment required by this Subsection shall be based are the following rates
17 provided in the Affordable Care Act and codified at 42 U.S.C. 1396d(y):

18 a. An FMAP of one hundred percent for calendar year 2016.

19 b. An FMAP of ninety-five percent for calendar year 2017.

20 c. An FMAP of ninety-four percent for calendar year 2018.

21 d. An FMAP of ninety-three percent for calendar year 2019.

22 e. An FMAP of ninety percent for calendar year 2020.

23 2. Unless the conditions of Subsection D of this Section are met, the annual
24 rates of reduction in Medicaid enrollment shall be as follows:

25 a. On January 1, 2017, when the FMAP for newly eligible adults decreases
26 by five percent from that of the preceding calendar year, the cost containment
27 program shall disenroll five percent of newly eligible adults who enrolled in
28 Medicaid in 2016.

1 b. On January 1, 2018, when the FMAP for newly eligible adults decreases
2 by one percent from that of the preceding calendar year, the cost containment
3 program shall disenroll one percent of newly eligible adults who enrolled in
4 Medicaid in 2016.

5 c. On January 1, 2019, when the FMAP for newly eligible adults decreases
6 by one percent from that of the preceding calendar year, the cost containment
7 program shall disenroll one percent of newly eligible adults who enrolled in
8 Medicaid in 2016.

9 d. On January 1, 2020, when the FMAP for newly eligible adults decreases
10 by three percent from that of the preceding calendar year, the cost containment
11 program shall disenroll three percent of newly eligible adults who enrolled in
12 Medicaid in 2016.

13 D. If 42 U.S.C. 1396d(y) is amended to revise any FMAP referred to in this
14 Section, then all of the following shall apply:

15 1. The FMAPs for newly eligible adults upon which the annual reductions
16 in Medicaid enrollment required by this Section are based shall be those specified
17 in 42 U.S.C. 1396d(y), as amended.

18 2. The bureau shall modify the annual rates of reduction in Medicaid
19 enrollment specified in Subsection C of this Section as necessary to correspond to
20 the FMAPs specified in 42 U.S.C. 1396d(y), as amended. The bureau shall ensure
21 that in this case, the annual rates of reduction in Medicaid enrollment correspond to
22 the federal medical assistance percentages specified in 42 U.S.C. 1396d(y) in the
23 same manner as provided in Subsection C of this Section.

24 E. The bureau shall require each newly eligible adult who enrolls in
25 Medicaid to affirmatively acknowledge understanding of all of the following:

26 1. A person's eligibility for Medicaid under Medicaid expansion is not a
27 perpetual right or guaranteed entitlement.

28 2. A person's eligibility for Medicaid under Medicaid expansion is subject
29 to cancellation at any time, with appropriate notice given, by the bureau.

1 Subchapters ~~A.-C.~~ B. and C. Reserved.

2 Subchapter D. Incurred Medical

3 §939. Medically Needy

4 A. The following criteria apply to all incurred medical expenses for
5 medically needy.

6 1. Bills for necessary medical and remedial services furnished more than
7 three months before the Medicaid application is filed will be excluded as an incurred
8 expense. Current payments on excluded expenses will be allowed as an incurred
9 expense.

10 2. The first budget period for the Medically Needy will begin the first month
11 in the three-month period prior to the date of application in which the applicant
12 received covered services.

13 * * *

14 BE IT FURTHER RESOLVED that the secretary of the Department of Health and
15 Hospitals is hereby authorized and directed to submit to the Centers for Medicare and
16 Medicaid Services on or before July 1, 2016, any Medicaid state plan amendments and
17 demonstration waiver applications as may be necessary to implement the provisions of this
18 Resolution.

19 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
20 office of the state register and to the secretary of the Department of Health and Hospitals.

21 BE IT FURTHER RESOLVED that the office of the state register is hereby directed
22 to have the amendments to Chapter 9 of Subpart 1 of Part III of Title 50 of the Louisiana
23 Administrative Code printed and incorporated into the code.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HCR 4 Original 2016 Regular Session Ivey

Amends the Medicaid eligibility rules of the Department of Health and Hospitals (DHH) to provide for a Medicaid expansion cost containment program.

Present rule provides relative to eligibility for the Medicaid program.

Proposed rule retains present rule, and adds thereto the following definitions:

- (1) "ACA" and "Affordable Care Act" mean the following acts of congress, collectively:
 - (a) The Patient Protection and Affordable Care Act (Public Law 111-148).
 - (b) The Health Care and Education Reconciliation Act (Public Law 111-152).
- (2) "Federal medical assistance percentage" and "FMAP" mean the rate which determines the federally financed share of total expenditures of a state for services to Medicaid enrollees in a given year.
- (3) "Medicaid expansion" means an expansion of Medicaid eligibility standards of a state to conform with those provided in the Affordable Care Act.
- (4) "Newly eligible adult" means an adult who becomes eligible for the Medicaid program exclusively through Medicaid expansion, and who would not otherwise be eligible for Medicaid.

Proposed rule establishes a requirement that notwithstanding any provision of present rule to the contrary, DHH shall implement a Medicaid cost containment program beginning on Jan. 1 of the calendar year following the year in which Medicaid expansion becomes effective in this state.

Proposed rule provides that the cost containment program shall annually reduce the number of newly eligible adults enrolled in Medicaid in proportion to the decrease in the FMAP of the corresponding year for newly eligible adults, as provided specifically in proposed rule.

Proposed rule provides that unless the conditions of proposed rule relative to FMAP rate amendments are met, the annual FMAPs for newly eligible adults upon which the annual reductions in Medicaid enrollment shall be based are the following rates provided in the ACA:

- (1) An FMAP of 100% for calendar year 2016.
- (2) An FMAP of 95% for calendar year 2017.
- (3) An FMAP of 94% for calendar year 2018.
- (4) An FMAP of 93% for calendar year 2019.
- (5) An FMAP of 90% for calendar year 2020.

Corresponding to the FMAPs provided in the ACA, proposed rule provides that the annual rates of reduction in enrollment in the Louisiana Medicaid program shall be as follows:

- (1) On Jan. 1, 2017, when the FMAP for newly eligible adults decreases by 5% from that of the preceding calendar year, the cost containment program shall disenroll 5% of newly eligible adults who enrolled in Medicaid in 2016.
- (2) On Jan. 1, 2018, when the FMAP for newly eligible adults decreases by 1% from that of the preceding calendar year, the cost containment program shall disenroll 1% of newly eligible adults who enrolled in Medicaid in 2016.

- (3) On Jan. 1, 2019, when the FMAP for newly eligible adults decreases by 1% from that of the preceding calendar year, the cost containment program shall disenroll 1% of newly eligible adults who enrolled in Medicaid in 2016.
- (4) On Jan. 1, 2020, when the FMAP for newly eligible adults decreases by 3% from that of the preceding calendar year, the cost containment program shall disenroll 3% of newly eligible adults who enrolled in Medicaid in 2016.

Proposed rule stipulates that if federal law is amended to revise any FMAP provided in the ACA, then all of the following requirements apply:

- (1) The FMAPs for newly eligible adults upon which the annual reductions in Medicaid enrollment required by proposed rule are based shall be those specified in federal law, as amended.
- (2) DHH shall modify the annual rates of reduction in Medicaid enrollment specified in proposed rule as necessary to correspond to the FMAPs specified in federal law, as amended. Proposed rule provides that in this case, DHH shall ensure that the annual rates of reduction in Medicaid enrollment correspond to the FMAPs specified in amended federal law in the same manner as provided in proposed rule relative to enrollment reductions corresponding to the FMAPs provided in the ACA.

Proposed rule provides that DHH shall require each newly eligible adult who enrolls in Medicaid to affirmatively acknowledge understanding of all of the following:

- (1) A person's eligibility for Medicaid under Medicaid expansion is not a perpetual right or guaranteed entitlement.
- (2) A person's eligibility for Medicaid under Medicaid expansion is subject to cancellation at any time, with appropriate notice given, by DHH.

(Amends LAC Title 50, Part III, Subpart 1, Ch. 9)