

Regular Session, 2014

HOUSE BILL NO. 261

BY REPRESENTATIVE DIXON

MEDICAID: Causes eligibility standards for the La. Medicaid Program to conform to those established by the ACA and creates the La. Health Care Independence Program

1 AN ACT

2 To enact Chapter 8-B of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 46:979.11 through 979.15, relative to the medical assistance program; to  
4 provide for eligibility for benefits of the medical assistance program; to require state  
5 participation in the expansion of medical assistance program eligibility provided in  
6 federal law; to provide specifications for a program through which the state shall  
7 implement the expansion of medical assistance program eligibility; to provide for  
8 definitions; to provide for legislative findings and intent; to provide for termination;  
9 and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 8-B of Title 46 of the Louisiana Revised Statutes of 1950,  
12 comprised of R.S. 46:979.11 through 979.15, is hereby enacted to read as follows:

13 CHAPTER 8-B. LOUISIANA HEALTH CARE INDEPENDENCE PROGRAM

14 §979.11. Title

15 This Chapter shall be known and may be cited as the "Louisiana Health Care  
16 Independence Act".

17 §979.12. Definitions

18 As used in this Chapter, the following terms have the meaning ascribed to  
19 them in this Section:

1           (1) "ACA" and "Affordable Care Act" mean the following acts of congress,  
2           collectively:

3           (a) The Patient Protection and Affordable Care Act, which originated as H.R.  
4           3590 in the One Hundred Eleventh United States Congress and became Public Law  
5           111-148.

6           (b) The Health Care and Education Reconciliation Act, which originated as  
7           H.R. 4872 in the One Hundred Eleventh United States Congress and became Public  
8           Law 111-152.

9           (2) "Centers for Medicare and Medicaid Services" means the division of the  
10          United States Department of Health and Human Services which administers and  
11          regulates the Medicaid program.

12          (3)(a) "Cost sharing" means a mechanism by which a portion of the cost of  
13          a covered medical service is paid by or on behalf of an eligible Medicaid enrollee,  
14          and may include copayments or coinsurance.

15          (b) "Cost sharing" shall not include deductibles.

16          (4) "Department" means the Department of Health and Hospitals.

17          (5) "Health insurance marketplace" means the online service also known as  
18          the "health insurance exchange" which is administered by the United States  
19          Department of Health and Human Services for states that opted not to operate a state-  
20          based insurance exchange in accordance with the provisions of the ACA, and which  
21          assists individuals, families, and small businesses in shopping for and purchasing  
22          health insurance coverage in a way that permits comparison of available qualified  
23          health plans based upon price, benefits, services, and quality.

24          (6) "Independence account" means a financial account for health care  
25          expenses of a person that can be utilized in a manner similar to a health savings  
26          account or a medical savings account.

27          (7) "Medicaid" and "medical assistance program" mean the medical  
28          assistance program provided for in Title XIX of the Social Security Act.

1           (8) "Premium" means a charge that a person pays as a condition of enrolling  
2           in health care coverage.

3           (9) "Program" means the Louisiana Health Care Independence Program  
4           established by this Chapter.

5           (10) "Qualified health plan" means a federally certified individual health  
6           insurance plan offered by a carrier through the health insurance marketplace in  
7           Louisiana.

8           (11) "Secretary" means the secretary of the Department of Health and  
9           Hospitals.

10           §979.13. Legislative findings; purpose

11           A. The Legislature of Louisiana hereby finds and declares the following:

12           (1) The Affordable Care Act, referred to hereafter in this Chapter as the  
13           "ACA", sets forth health policy reforms which reshape the way virtually all  
14           Americans will receive and finance their health care.

15           (2) In a decision announced on June 28, 2012, the Supreme Court of the  
16           United States in *National Federation of Independent Business Et Al. v. Sebelius,*  
17           *Secretary of Health and Human Services, Et Al.* upheld the overall constitutionality  
18           of the ACA; but in the same ruling, a majority of the court held that the mandatory  
19           expansion of Medicaid eligibility as provided in the ACA is unconstitutionally  
20           coercive of states, thereby making participation in the Medicaid expansion a  
21           voluntary proposition for each state.

22           (3) The Centers for Medicare and Medicaid Services has demonstrated  
23           flexibility in administering the expansion of Medicaid eligibility by approving  
24           applications submitted by states to implement the expansion through programs that  
25           provide premium assistance to persons who purchase private insurance through  
26           health insurance exchanges, known commonly as the "private insurance option".

27           (4) The legislature declares that due to compelling moral and economic  
28           reasons, participation in the expansion of Medicaid eligibility is in the best interest  
29           of this state.

1           B. The purposes of this state in expanding Medicaid eligibility to conform  
2           to the standards provided in the ACA, as required by this Chapter, are as follows:

3                   (1) To maximize the number of Louisianians who are covered by some form  
4                   of health insurance.

5                   (2) To provide basic health coverage to the working poor of the state who  
6                   are not offered insurance through their employer and do not earn enough money to  
7                   meet basic family needs and pay for private health insurance.

8                   (3) To assure health care providers who serve low- to moderate-income  
9                   persons of some amount of compensation for the care they provide, as the ACA  
10                  provides for a dramatic reduction in funding to federal programs which currently  
11                  finance care for the uninsured as a means of financing the Medicaid expansion.

12                  (4) To avert the economic and human costs of crises in both access to health  
13                  care and health services financing which are likely to result from not participating  
14                  in the expansion of Medicaid while other federal sources of financing for medical  
15                  care for the uninsured and the indigent are being drastically reduced or eliminated.

16                  §979.14. Medicaid eligibility; administration of the Louisiana Health Care  
17                  Independence Program

18                  A. The department shall create and administer the Louisiana Health Care  
19                  Independence Program, referred to hereafter in this Chapter as the "program", in  
20                  accordance with the provisions of this Section.

21                  B. On or before September 1, 2014, the department shall submit all of the  
22                  following:

23                   (1) Applications for any federal waivers necessary to implement the program  
24                   in a manner consistent with this Chapter, including without limitation approval for  
25                   a comprehensive waiver under Section 1115 of the Social Security Act (42 U.S.C.  
26                   1315).

27                   (2) Medicaid state plan amendments necessary to implement the program in  
28                   a manner consistent with this Chapter.

1           (3) Any Medicaid state plan amendments that are optional and may be  
2           revoked by the state at its discretion.

3           C.(1) Prior to implementing the program, the department shall confirm that  
4           employers will not be subject to any penalty, including without limitation an  
5           assessable payment, as provided in the ACA relative to shared responsibility for  
6           employees who would become eligible for Medicaid pursuant to this Chapter if the  
7           employees enroll in either the program or a qualified health plan through the health  
8           insurance marketplace.

9           (2) The department shall not implement the program if it is unable to  
10          confirm that employer penalties are inapplicable in accordance with Paragraph (1)  
11          of this Subsection.

12          D.(1) Implementation of the program shall be contingent upon the receipt of  
13          necessary federal approvals.

14          (2) The department shall not implement the program if it does not receive  
15          all necessary federal approvals as provided in Paragraph (1) of this Subsection.

16          E. The program shall provide premium assistance for eligible individuals for  
17          the purpose of facilitating their enrollment in a qualified health plan through the  
18          federal health insurance marketplace.

19          F.(1) The department is hereby specifically authorized to pay premiums and  
20          supplemental cost-sharing subsidies directly to federally qualified health plans on  
21          behalf of enrolled eligible individuals.

22          (2) The purposes of the authorization provided in this Subsection are to  
23          increase participation in the health insurance market, intensify price pressures, and  
24          reduce costs for both publicly and privately funded health care.

25          G. In developing and implementing the program, the department shall  
26          accomplish all of the following to the extent allowable by law:

27          (1) Pursue strategies that promote insurance coverage of children, including  
28          those eligible for the Louisiana Children's Health Insurance Program (LaCHIP), by  
29          the health insurance plans of their parents or caretakers.

1           (2) Conduct outreach and provide information on coverage options to  
2           Medicaid enrollees whose needs would be reduced or better served through  
3           participation in the federal health insurance marketplace.

4           H.(1) For the purposes of this Subsection, "new eligibles" means the group  
5           of persons determined to be eligible for Medicaid benefits under the new adult group  
6           as provided in the ACA and who meet the definition of "newly eligible" in section  
7           1905(y)(2)(A) of the Patient Protection and Affordable Care Act.

8           (2) The program shall terminate within one hundred twenty days after  
9           publication in the Federal Register of any reduction in one or more of the following  
10          federal medical assistance percentages for services to new eligibles:

11           (a) One hundred percent for 2014, 2015, or 2016.

12           (b) Ninety-five percent for 2017.

13           (c) Ninety-four percent for 2018.

14           (d) Ninety-three percent for 2019.

15           (e) Ninety percent for 2020 or any year after 2020.

16          I. The department shall require each adult who enrolls in the program to  
17          affirmatively acknowledge all of the following:

18           (1) The program is neither a perpetual right provided by the federal or state  
19           government nor a guarantee of assistance.

20           (2) The program is subject to cancellation upon appropriate notice.

21           (3) The program is not an entitlement program.

22          J.(1) The department shall develop the necessary program elements and seek  
23          from the Centers for Medicare and Medicaid Services all necessary waivers and  
24          approvals to allow non-aged, non-disabled persons who are eligible for the program  
25          to utilize independence accounts that operate in a manner similar to a health savings  
26          account or medical savings account during the calendar year 2016.

27          (2) The independence accounts shall accomplish all of the following  
28          functions:

1           (a) Allow a participant to purchase cost-effective high-deductible health  
2           insurance.

3           (b) Promote independence and self-sufficiency.

4           (3) Subject to federal approval, the department shall implement cost sharing  
5           as a program requirement for any enrollee whose income exceeds fifty percent of the  
6           applicable federal poverty level.

7           (4) The program may offer rewards to enrollees based on healthy living and  
8           self-sufficiency.

9           (5)(a) At the end of each fiscal year, if there are funds remaining in an  
10          independence account, a majority of the contribution by the state shall remain in the  
11          control of the participant as a positive incentive for the responsible use of the health  
12          care system and personal responsibility for health maintenance.

13          (b) Allowable uses of an independence account may include, without  
14          limitation, transferring of funds from the account into a private sector health savings  
15          account for the participant in accordance with program rules promulgated by the  
16          department.

17          K. On a quarterly basis, the department shall report to the Joint Legislative  
18          Committee on the Budget, within two weeks of the end of each quarter, information  
19          regarding the following aspects of the program:

20           (1) Program enrollment.

21           (2) Patient experience.

22           (3) Economic impact including enrollment distribution.

23           (4) Carrier competition.

24           (5) Success in avoiding uncompensated care.

25          L. The department shall take the following actions to provide for  
26          implementation of the program and managing program operations:

27           (1) Promulgate all rules necessary to implement the program in accordance  
28          with the Administrative Procedure Act.

1                   (2) Project, track, and report state obligations for uncompensated care in  
2                   order to identify potential incremental future decreases.

3                   (3) Recommend to the legislature adjustments in program funding as it  
4                   deems appropriate.

5                   §979.15. Termination

6                   The provisions of this Chapter shall terminate and become null and void on  
7                   and after July 1, 2018.

8                   Section 2. This Act shall become effective upon signature by the governor or, if not  
9                   signed by the governor, upon expiration of the time for bills to become law without signature  
10                  by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
11                  vetoed by the governor and subsequently approved by the legislature, this Act shall become  
12                  effective on the day following such approval.

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#### 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)]

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Dixon

HB No. 261

**Abstract:** Creates the La. Health Care Independence Program as a means by which to implement the expansion of Medicaid eligibility as provided in federal law.

Proposed law creates the La. Health Care Independence Program, referred to hereafter as the "program", as a means by which to implement the expansion of Medicaid eligibility standards as provided in the Patient Protection and Affordable Care Act. Provides that the program shall be comprised of all of the following components and functions and subject to conditions as follows:

- (1) On or before Sept. 1, 2014, DHH shall submit and apply for federal waivers and state plan amendments as are necessary to implement the program in a manner consistent with proposed law, including without limitation approval for a comprehensive waiver under Section 1115 of the Social Security Act.
- (2) As a condition for program implementation, DHH shall confirm that employers will not be subject to any penalty provided in federal law concerning shared responsibility for employees who are Medicaid-eligible if the employees are enrolled in the program and enroll in a qualified health plan through the federal health insurance marketplace.
- (3) The program shall include premium assistance for eligible individuals to enable their enrollment in a qualified health plan through the federal health insurance marketplace.



- (4) DHH is authorized to pay premiums and supplemental cost-sharing subsidies directly to the federally qualified health plans for enrolled eligible individuals.
- (5) DHH is required to pursue strategies that promote insurance coverage of children in their parents' or caregivers' plan, including children eligible for the La. Children's Health Insurance Program (LaCHIP), and to conduct outreach and provide information on coverage options to Medicaid enrollees whose needs would be reduced or better served through participation in the federal health insurance marketplace.
- (6) The program shall terminate within 120 days after a reduction in any enhanced federal medical assistance percentages established pursuant to federal law for services to newly eligible individuals.
- (7) Program enrollees shall affirmatively acknowledge that the program is not a perpetual federal or state right or a guarantee of assistance, is subject to cancellation with notice, and is not an entitlement program.
- (8) DHH shall seek from the Centers for Medicare and Medicaid Services all necessary waivers and approvals in order to allow non-aged, non-disabled program-eligible participants to utilize a system of accounts to be known as "independence accounts" that operate in a manner similar to health savings accounts or medical savings accounts commencing in calendar year 2016.
- (9) DHH is required to report to the Joint Legislative Committee on the Budget on a quarterly basis, and within two weeks of the end of each quarter, information regarding program enrollment, patient experience, economic impact, carrier competition, and success in avoiding uncompensated care.

Proposed law requires DHH to take the following actions to provide for implementation of the program and managing program operations:

- (1) Promulgate all rules necessary to implement the program in accordance with the APA.
- (2) Project, track, and report state obligations for uncompensated care in order to identify potential incremental future decreases.
- (3) Recommend to the legislature adjustments in program funding as it deems appropriate.

Proposed law terminates and becomes null and void on and after July 1, 2018.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 46:979.11-979.15)