

2016 Regular Session

HOUSE BILL NO. 309

BY REPRESENTATIVES BACALA AND HODGES

MEDICAID: Provides for cost containment, cost sharing, and long term services and supports in the Medicaid managed care program

1 AN ACT

2 To amend and reenact R.S. 46:460.32, and to enact R.S. 39:100.61(B)(1)(c) and Part XIV

3 of Chapter 3 of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised

4 of R.S. 46:460.101 through 460.122, and Part XV of Chapter 3 of Title 46 of the

5 Louisiana Revised Statutes of 1950, to be comprised of R.S. 46:460.131 through

6 460.133, relative to the Medicaid managed care program of this state; to require

7 implementation of cost containment measures in the Medicaid managed care

8 program; to provide for duties of the Department of Health and Hospitals in

9 administering the Medicaid managed care program; to require implementation of

10 certain federally authorized Medicaid cost sharing functions; to restrict Medicaid

11 coverage of nonemergency services delivered in hospital emergency departments;

12 to require implementation of a managed long term services and supports system; to

13 prohibit Medicaid coverage of certain prescription drugs; to provide for dedication

14 of revenue derived from certain cost sharing functions; to authorize certain sources

15 of monies for the New Opportunities Waiver Fund; to require promulgation of

16 administrative rules; to provide for findings and definitions; and to provide for

17 related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 39:100.61(B)(1)(c) is hereby enacted to read as follows:

3 §100.61. New Opportunities Waiver Fund

4 * * *

5 B.(1) The source of monies in the fund shall be as follows:

6 * * *

7 (c) Monies derived from Medicaid enrollee cost sharing required for
8 nonemergency services provided at hospital emergency rooms as authorized by the
9 provisions of R.S. 46:460.112.

10 * * *

11 Section 2. R.S. 46:460.32 is hereby amended and reenacted and Part XIV of Chapter
12 3 of Title 46 of the Louisiana Revised Statutes of 1950, comprised of R.S. 46:460.101
13 through 460.122, and Part XV of Chapter 3 of Title 46 of the Louisiana Revised Statutes of
14 1950, comprised of R.S. 46:460.131 through 460.133, are hereby enacted to read as follows:

15 §460.32. Prepaid coordinated care networks; pharmaceutical and therapeutics
16 committees; exclusion of certain drugs

17 A. On or before January 1, 2014, each prepaid coordinated care network
18 shall form a body to be designated as a "Pharmaceutical and Therapeutics
19 Committee" which shall develop a drug formulary and preferred drug list for the
20 prepaid coordinated care network. Each Pharmaceutical and Therapeutics
21 Committee created pursuant to the provisions of this Section shall meet no less
22 frequently than semiannually in Baton Rouge, Louisiana. Such meetings shall be
23 open to the public and shall allow for public comment prior to voting by the
24 committee on any change in the preferred drug list or formulary.

25 B. Each Pharmaceutical and Therapeutics Committee shall exclude from its
26 preferred drug list and shall prohibit prior authorization of all of the following
27 products:

28 (1) Any medication sold by a pharmaceutical company under a
29 trademark-protected name, known commonly as a "brand name drug", if a generic

1 equivalent medication is commercially available and is less costly than the net cost
2 of the brand name drug inclusive of all rebate amounts for the brand name drug.

3 (2) Any medication which has a nonprescription equivalent, known
4 commonly as an "over-the-counter" drug.

5 * * *

6 PART XIV. MEDICAID COST CONTAINMENT

7 SUBPART A. GENERAL PROVISIONS

8 §460.101. Definitions

9 As used in this Part, the following terms have the meaning ascribed in this
10 Section:

11 (1) "Centers for Medicare and Medicaid Services" means the division of the
12 United States Department of Health and Human Services which regulates the
13 Medicaid program.

14 (2) "Cost sharing" means a contribution that a Medicaid enrollee makes
15 toward the cost of a Medicaid-covered health service which he utilizes, through
16 mechanisms including but not limited to deductibles, copayments, and coinsurance.

17 (3) "Department" means the Department of Health and Hospitals.

18 (4) "Emergency room" means an emergency department operated within a
19 hospital facility licensed pursuant to the Hospital Licensing Law, R.S. 40:2100 et
20 seq.

21 (5) "Medicaid" and "medical assistance program" mean the medical
22 assistance program provided for in Title XIX of the Social Security Act.

23 (6) "Secretary" means the secretary of the Department of Health and
24 Hospitals.

25 §460.102. Legislative findings; declaration

26 A. The Legislature of Louisiana hereby finds and affirms the following:

27 (1) From state fiscal year 2007-2008 to state fiscal year 2015-2016:

28 (a) The total annual operating budget of this state decreased by eleven and
29 nine-tenths percent.

1 (b) Total expenditures on the Medicaid program of this state increased by
2 forty and nine-tenths percent.

3 (c) State expenditures on the Medicaid program increased by ninety-four and
4 seven-tenths percent.

5 (d) Medicaid remained the largest single item in Louisiana's operating
6 budget.

7 (2) At over eight billion three hundred eighty million dollars, Medicaid
8 comprises thirty-four and two-tenths percent of Louisiana's total operating budget
9 in state fiscal year 2015-2016; whereas Medicaid comprised twenty-one and five-
10 tenths percent of the state's operating budget in state fiscal year 2007-2008.

11 (3) Limiting Medicaid coverage of nonemergency services delivered in
12 hospital emergency departments is a sensible and fiscally responsible policy as it
13 provides a prudent means of containing Medicaid costs.

14 (4) Cost containment measures in the Medicaid program are essential means
15 for enhancing the efficiency and effectiveness of health care delivered to the
16 population served by the program.

17 B. The legislature hereby declares that cost containment in the Medicaid
18 program is an urgent fiscal and public health priority of this state.

19 SUBPART B. COST SHARING

20 §460.111. Federally authorized Medicaid cost sharing; implementation

21 A.(1) The secretary shall develop and implement medical assistance program
22 policies which apply each cost sharing function authorized pursuant to federal
23 Medicaid regulations, 42 CFR 447.50 et seq., to Medicaid enrollees who are not
24 specifically exempted from such cost sharing functions by the provisions of Section
25 1916 of the Social Security Act; except the secretary shall not be required to apply
26 any cost sharing function which is based upon an eligibility standard, health service,
27 or any other factor or measure which is not encompassed by the Medicaid program
28 of this state.

1 (2) The cost sharing functions authorized by this Subsection shall include,
2 without limitation, the following:

3 (a) Cost sharing for inpatient and outpatient services.

4 (b) Copayments for non-institutional care.

5 (c) Cost sharing for preferred and non-preferred drugs.

6 (d) Cost sharing for nonemergency services furnished in a hospital
7 emergency department.

8 (e) Assessment of premiums upon individuals whose income exceeds certain
9 levels specified in federal regulations.

10 (3) In implementing the cost sharing functions required in this Subsection,
11 the secretary shall set the amount of each cost assigned to nonexempt Medicaid
12 enrollees at a level allowed pursuant to 42 CFR 447.50 et seq. which maximizes the
13 net reduction of state Medicaid program expenditures resulting from the respective
14 cost sharing function.

15 (4) Whenever a Medicaid cost sharing function is added, deleted, expanded,
16 limited, or otherwise revised pursuant to rules and regulations promulgated by the
17 Centers for Medicare and Medicaid Services, the secretary shall, as soon as is
18 practicable pursuant to the effective date of such rules or regulations, revise and
19 reinstate pertinent medical assistance program policies correspondingly to provide
20 for such cost sharing functions and their respective levels in accordance with the
21 provisions of Paragraphs (1) and (2) of this Subsection.

22 B. The department shall implement the coverage limitation authorized by 42
23 CFR 447.54 for nonemergency use of a hospital emergency room in accordance with
24 the provisions of Subpart C of this Part.

25 §460.112. Revenue derived from certain cost sharing functions; dedication to New
26 Opportunities Waiver Fund

27 A. All state revenue derived as a result of the imposition of cost sharing for
28 nonemergency services furnished in a hospital emergency department, as authorized

1 by the provisions of R.S. 46:460.111, is hereby dedicated to the New Opportunities
2 Waiver Fund.

3 B. The state treasurer shall annually deposit into the New Opportunities
4 Waiver Fund monies in an amount equal to the reduction in Medicaid provider
5 reimbursements corresponding to the cost sharing amounts assessed to Medicaid
6 enrollees for nonemergency services furnished in hospital emergency departments
7 authorized by the provisions of this Subpart. Such monies may be utilized for any
8 purpose of the fund provided for in R.S. 39:100.61.

9 §460.113. Rules and regulations

10 The secretary shall promulgate all rules and regulations in accordance with
11 the Administrative Procedure Act, submit any Medicaid state plan amendments, and
12 take all other actions as are necessary to institute the Medicaid cost sharing functions
13 provided for in this Subpart.

14 SUBPART C. COVERAGE LIMITATION FOR

15 NONEMERGENCY SERVICES

16 §460.121. Limitation on coverage for nonemergent conditions

17 The secretary of the department shall develop and implement medical
18 assistance program policies which provide for a prohibition on Medicaid
19 reimbursement for any healthcare service delivered in an emergency room to a
20 Medicaid enrollee when all of the following conditions apply:

21 (1) The service is to treat any health condition classified by Medicaid
22 program policy as nonemergent.

23 (2) The enrollee has been treated in an emergency room for any health
24 condition classified by Medicaid program policy as nonemergent on three separate
25 occasions within the past year, and the Medicaid program provided reimbursement
26 on each occasion for such treatment.

27 §460.122. Rules and regulations

28 The secretary shall promulgate all rules and regulations in accordance with
29 the Administrative Procedure Act, submit any Medicaid state plan amendments, and

1 take all other actions as are necessary to institute the limitation on coverage for
2 nonemergent conditions provided for in this Subpart.

3 PART XV. MANAGED LONG TERM SERVICES AND SUPPORTS

4 §460.131. Definitions

5 As used in this Part, the following terms have the meaning ascribed in this
6 Section:

7 (1) "Department" means the Department of Health and Hospitals.

8 (2) "Managed long term services and supports" and "MLTSS" mean a
9 system for delivery of long term services and supports through a capitated Medicaid
10 managed care program.

11 (3) "Medicaid" and "medical assistance program" mean the medical
12 assistance program provided for in Title XIX of the Social Security Act.

13 (4) "Secretary" means the secretary of the Department of Health and
14 Hospitals.

15 §460.132. Legislative findings; declaration

16 A. The Legislature of Louisiana hereby finds and affirms the following:

17 (1) Since the initial statewide implementation of Medicaid managed care in
18 2012 which encompassed select groups of enrollees, the department has moved
19 incrementally to institute managed care for additional Medicaid populations and
20 services.

21 (2) As of January 1, 2016, the entirety of the Medicaid population of this
22 state was enrolled in managed care except for approximately seventy-two thousand
23 persons receiving long-term care services in institutional or home-based settings.

24 (3) The benefits of a managed long term services and supports system,
25 referred to hereafter in this Part as an "MLTSS system", include improved quality
26 of care and expanded service options for Medicaid enrollees who need long-term
27 care due to conditions associated with age or disability. Beyond improving care for
28 a vulnerable population, MLTSS systems also result in greater fiscal sustainability

1 of state Medicaid programs, as evidenced by fiscal outcomes in the growing number
2 of states that have implemented such a system.

3 (4) In accordance with the general timeline recommended by the Centers for
4 Medicare and Medicaid Services for optimal planning and implementation of an
5 MLTSS system, the department commenced preliminary steps in 2013 to implement
6 such a system beginning in October of 2015, but abandoned the effort in 2015 prior
7 to implementation.

8 B. The legislature hereby declares that the establishment of an MLTSS
9 system within the Medicaid program is a priority of this state.

10 §460.133. Managed long term services and supports; implementation

11 A.(1) The department shall submit to the Centers for Medicare and Medicaid
12 Services any new waiver application, amendment to an existing waiver, and
13 Medicaid state plan amendment as may be necessary to establish an MLTSS system
14 within the Medicaid managed care program through a waiver authorized pursuant to
15 Section 1915(b) of the Social Security Act.

16 (2) Such applications and amendments may include, but shall not be limited
17 to, the following:

18 (a) Amendments to the Community Choices Waiver and Adult Day Health
19 Care Waiver to operate under a managed care model concurrent with a Section
20 1915(b) waiver for MLTSS.

21 (b) Revisions to the Behavioral Health Services Waiver to exclude
22 populations covered through the MLTSS system.

23 (c) Amendments to authorize the operation of community behavioral health
24 services delivered pursuant to Section 1915(i) of the Social Security Act through
25 multiple managed care entities rather than a single prepaid inpatient health plan.

26 (d) The following changes to the Long-Term Personal Care Services
27 (LT-PCS) program:

28 (i) Amendments to allow self-direction to be implemented statewide within
29 the program.

- (2) At over \$8,380,000,000, Medicaid comprises 34.2% of Louisiana's total operating budget in state fiscal year 2015-2016; whereas Medicaid comprised 21.5% of the state's operating budget in state fiscal year 2007-2008.

Proposed law declares that cost containment in the Medicaid program is an urgent fiscal and public health priority of this state.

Medicaid Pharmacy Limitations

Present law provides relative to private entities that contract with the Department of Health and Hospitals (DHH) to provide Medicaid benefits and services to enrollees in the Medicaid managed care program. Requires that each such entity form a body to be designated as a "Pharmaceutical and Therapeutics Committee" which shall develop a drug formulary and preferred drug list for the entity's Medicaid managed care network.

Proposed law retains present law and adds thereto a requirement that each Pharmaceutical and Therapeutics Committee exclude from its preferred drug list and prohibit prior authorization of all of the following products:

- (1) Any medication sold by a pharmaceutical company under a trademark-protected name, known commonly as a "brand name drug", if a generic equivalent medication is commercially available and is less costly than the net cost of the brand name drug inclusive of all rebate amounts for the brand name drug.
- (2) Any medication which has a nonprescription equivalent, known commonly as an "over-the-counter" drug.

Medicaid Cost Sharing

Proposed law requires DHH to develop and implement policies which apply each cost sharing function authorized pursuant to federal Medicaid regulations, 42 CFR 447.50 et seq., to Medicaid enrollees who are not specifically exempted from such cost sharing functions by federal law; except the secretary shall not be required to apply any cost sharing function which is based upon an eligibility standard, health service, or any other factor or measure which is not encompassed by the Medicaid program of this state.

Functions authorized pursuant to federal Medicaid regulations which proposed law requires DHH to impose include the following:

- (1) Cost sharing for inpatient and outpatient services (42 CFR 447.52).
- (2) Cost sharing for preferred and nonpreferred drugs (42 CFR 447.53).
- (3) Cost sharing for nonemergency services furnished in a hospital emergency department (42 CFR 447.54).
- (4) Assessment of premiums upon individuals whose income exceeds certain levels specified in federal regulations (42 CFR 447.55).

Proposed law provides that in implementing the cost sharing functions required in proposed law, DHH shall set the amount of each cost assigned to nonexempt Medicaid enrollees at a level allowed by federal regulations which maximizes the net reduction of state Medicaid program expenditures resulting from the respective cost sharing function.

Proposed law provides that whenever a Medicaid cost sharing function is added, deleted, expanded, limited, or otherwise revised pursuant to rules and regulations promulgated by the federal Medicaid agency, DHH shall revise and reinstate the pertinent policies correspondingly to provide for such cost sharing functions and their respective levels.

Proposed law dedicates to the New Opportunities Waiver Fund all state revenues derived as a result of the cost sharing requirements provided for in proposed law. Provides that the state treasurer shall annually deposit into the New Opportunities Waiver Fund monies in an amount equal to the net reduction in Medicaid provider reimbursements corresponding to the cost sharing amounts assessed to Medicaid enrollees pursuant to proposed law.

Coverage Limitation for Nonemergency Services

Proposed law requires DHH to develop and implement policies which prohibit Medicaid reimbursement for any healthcare service delivered in an emergency room to a Medicaid enrollee when all of the following conditions apply:

- (1) The service is to treat any health condition classified by Medicaid program policy as nonemergent.
- (2) The enrollee has been treated in an emergency room for any health condition classified by Medicaid program policy as nonemergent on three separate occasions within the past year, and the Medicaid program provided reimbursement on each occasion for such treatment.

Managed Long Term Services and Supports

Proposed law defines "managed long term services and supports" and "MLTSS" as a system for delivery of long term services and supports through a capitated Medicaid managed care program.

Proposed law requires DHH to submit to the federal Medicaid agency any new waiver application, amendment to an existing waiver, and Medicaid state plan amendment as may be necessary to establish an MLTSS system within the Medicaid managed care program through a waiver authorized pursuant to Section 1915(b) of the Social Security Act. Provides that such applications and amendments may include, but shall not be limited to, the following:

- (1) Amendments to the Community Choices Waiver and Adult Day Health Care Waiver to operate under a managed care model concurrent with a Section 1915(b) waiver for MLTSS.
- (2) Revisions to the Behavioral Health Services Waiver to exclude populations covered through the MLTSS system.
- (3) Amendments to authorize the operation of community behavioral health services delivered pursuant to Section 1915(i) of the Social Security Act through multiple managed care entities rather than a single prepaid inpatient health plan.
- (4) The following changes to the Long-Term Personal Care Services (LT-PCS) program:
 - (a) Amendments to allow self-direction to be implemented statewide within the program.
 - (b) Amendments to allow LT-PCS participants to purchase goods and services.
 - (c) Revision of the timeline for conducting LT-PCS reassessments from annually to at least once every eighteen months.

Proposed law requires DHH to promulgate all rules and regulations in accordance with the Administrative Procedure Act as are necessary to institute the MTLSS system provided for in proposed law.

Proposed law provides that the secretary of DHH shall take all such actions as are necessary to ensure that implementation of the MLTSS system provided for in proposed law is effective not later than July 1, 2016.

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

(Amends R.S. 46:460.32; Adds R.S. 39:100.61(B)(1)(c), R.S. 46:460.101-460.122, and R.S. 46:460.131-460.133)