

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing**

**Pharmacy Benefits Management Program
Copayment and Maximum Quantity
(LAC 50:XXIX.111 and 119)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.111 and §119 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.

Act 708 of the 2022 Regular Session of the Louisiana Legislature directed that the Department of Health require all Medicaid health plans to include the dispensing of a six-month supply of contraceptive drugs to be obtained at one time by the member, unless the member or the prescribing provider requests a smaller supply. In compliance with Act 708, the Department of Health, Bureau of Health Service Financing proposes to amend the provisions governing the Pharmacy Benefits Management Program in order to allow for a six-month supply of contraceptives. In addition, this proposed Rule allows a ninety-day supply of maintenance medications, and exempts pharmacy services provided during a federal public health emergency (PHE) from copayment requirements.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXIX. Pharmacy

Chapter 1 General Provisions

§111. Copayment

A. - A.1. ...

2. The pharmacy provider shall collect a copayment from the Medicaid ~~recipient~~beneficiary for each drug dispensed and covered by Medicaid. The following pharmacy services are exempt from the copayment requirements:

a. - b. ...

c. family planning services; ~~and~~

d. preventive medications as designated by the U.S. Preventive Services Task Force's A and B recommendations~~;~~;
and

e. services provided during a federal public health emergency (PHE).

A.3. - B.5. ...

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, Office of the Secretary, LR 32:1055 (June 2006), amended by the Department of Health, Bureau of Health Services

Financing, LR 43:1181 (June 2017), LR 43:1553 (August 2017), LR 46:34 (January 2020), LR 48:

§119. Maximum Quantity

A. ...

B. When maintenance drugs are prescribed and dispensed for chronic illnesses they shall be in quantities sufficient to effect economy in dispensing and yet be medically sound.

Maintenance type drugs should be prescribed and dispensed in at least a month's supply after the initial fill. A 90-day supply is allowed on maintenance drugs after a beneficiary has been on the same drug and strength for 60 days. Contraceptives should be dispensed in a six-month supply, after a beneficiary has been on the same drug and strength for six months, unless the beneficiary or prescriber requests a smaller supply.

C. For patients in nursing homes, the pharmacist shall bill for a minimum of a month's supply of medication unless the treating physician specifies a smaller quantity for a special medical reason. A 90-day supply is allowed on maintenance drugs after a beneficiary has been on the same drug and strength for 60 days.

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, Office of the Secretary, Bureau of Health

Services Financing, LR 32:1056 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1182 (June 2017), LR 46:34 (January 2020), LR 48:

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.

Family Impact Statement

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring that beneficiaries have access to sufficient quantities of prescription medications.

Poverty Impact Statement

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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by removing the copayment

requirement for pharmacy services during a federal public health emergency.

Small Business Statement

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule may have an adverse impact on small businesses, as described in the Act, if these legislatively required changes increase the financial burden on providers. With the resources available to the department, a regulatory flexibility analysis has been prepared in order to consider methods to minimize the potential adverse impact on small businesses. The department has determined that there is no less intrusive or less costly alternative methods of achieving the intended purpose since the changes result from legislative mandates.

Provider Impact Statement

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 staffing level requirements or qualifications required to provide the same level of service, but may increase direct or indirect costs to the provider and may have a negative impact on the provider's ability to provide the same level of service as

described in HCR 170 if additional inventory cost, inventory tax, and decreased reimbursement as a result of reduced dispensing fees adversely impacts the provider's financial standing.

Public Comments

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 31, 2022.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 10, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 27, 2022 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 10, 2022. If a public hearing is to be held, all interested persons are invited to

attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary