

2018 First Extraordinary Session

HOUSE BILL NO. 11

BY REPRESENTATIVES MCFARLAND, BACALA, AND EDMONDS

MEDICAID: Provides for copayment requirements in the La. Medicaid program (Item #16)

1 AN ACT

2 To enact R.S. 46:460.53 and Part XIV of Chapter 3 of Title 46 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 46:460.101 through 460.123, relative to the
4 medical assistance program of this state known commonly as Medicaid; to provide
5 for duties and responsibilities of the Louisiana Department of Health in
6 administering the Medicaid program; to provide definitions and legislative findings
7 relative to Medicaid; to provide for program efficiencies and cost containment
8 measures in Medicaid; to provide for reinvestment of monies realized from such
9 measures; to establish Medicaid copayment requirements for nonemergency services
10 delivered in hospital emergency departments and for nonpreferred drugs; to provide
11 for duties and responsibilities of hospitals and Medicaid managed care organizations
12 with respect to the nonemergency services copayment requirement; to provide for
13 promulgation of rules; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 46:460.53 and Part XIV of Chapter 3 of Title 46 of the Louisiana
16 Revised Statutes of 1950, comprised of R.S. 46:460.101 through 460.123, are hereby enacted
17 to read as follows:

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

4 (3) "Department" means the Louisiana Department of Health.

5 (4) "Emergency department" means an emergency department operated
6 within a hospital facility licensed pursuant to the Hospital Licensing Law, R.S.
7 40:2100 et seq.

8 (5) "Federal Medicaid cost sharing regulations" means the set of federal
9 Medicaid regulations providing relative to premiums and cost sharing codified in 42
10 CFR 447.50 et seq.

11 (6) "Federal poverty level" means the applicable federal poverty guideline
12 based on household size as published in the Federal Register by the United States
13 Department of Health and Human Services.

14 (7) "Managed care organization" has the same meaning as provided for that
15 term in 42 CFR 438.2.

16 (8) "Medicaid" and "medical assistance program" mean the medical
17 assistance program provided for in Title XIX of the Social Security Act.

18 (9) "Secretary" means the secretary of the Louisiana Department of Health.
19 §460.102. Legislative findings; declaration

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

21 (1) In the ten-year period from state fiscal year 2007-2008 to state fiscal year
22 2017-2018:

23 (a) Total expenditures of state tax dollars, also referred to as "total state
24 effort", on the Louisiana Medicaid program more than doubled, as did total overall
25 expenditures on the program inclusive of federal monies.

26 (b) Medicaid has remained the largest single item in Louisiana's operating
27 budget.

28 (2) At nearly twelve billion five hundred million dollars, the Medicaid
29 program comprises over forty-four percent of Louisiana's total operating budget in

1 state fiscal year 2017-2018; whereas the program comprised approximately
2 twenty-two percent of the state's operating budget in state fiscal year 2007-2008.

3 (3) Cost containment measures in the Medicaid program are essential means
4 for enhancing the efficiency and effectiveness of health services delivered to persons
5 served by the program.

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

8 SUBPART B. MEDICAID COPAYMENTS FOR
9 CERTAIN NONEMERGENCY SERVICES

10 §460.111. Legislative intent

11 The intent of this Subpart is to encourage Medicaid recipients to access health
12 services in the most cost-efficient medically appropriate setting.

13 §460.112. Emergency medical conditions, emergency and nonemergency services;
14 definitions

15 For purposes of this Subpart, the following terms have the meaning ascribed
16 in this Section:

17 (1) "Emergency medical condition" means a medical condition manifesting
18 itself by acute symptoms of sufficient severity, including severe pain, that a prudent
19 layperson who possesses an average knowledge of health and medicine could
20 reasonably expect the absence of immediate medical attention to result in any of the
21 following:

22 (a) Placing the health of the individual or, for a pregnant woman, the health
23 of the woman or her unborn child in serious jeopardy.

24 (b) Serious impairment to bodily functions.

25 (c) Serious dysfunction of any bodily organ or part.

26 (2) "Emergency services" means inpatient and outpatient services that meet
27 all of the following criteria:

28 (a) Are furnished by a provider who is qualified to furnish such services
29 under the laws of this state.

1 **(b) Are needed to evaluate or stabilize an emergency medical condition as**
2 **defined in this Section.**

3 **(3)(a) "Nonemergency services" means any care or services that are not**
4 **considered emergency services as defined in this Section.**

5 **(b) The term "nonemergency services" shall not include any services**
6 **furnished in a hospital emergency department that are required to be provided as an**
7 **appropriate medical screening examination or stabilizing examination and treatment**
8 **under the federal Emergency Treatment and Active Labor Act.**

9 **§460.113. Copayments; nonemergency services provided by hospital emergency**
10 **departments; applicability**

11 **A. The department shall establish a copayment requirement in the Louisiana**
12 **Medicaid program for nonemergency services provided by a hospital emergency**
13 **department, subject to the requirements and limitations of 42 U.S.C. 1396o and**
14 **federal Medicaid cost sharing regulations.**

15 **B.(1) The copayment provided for in this Subpart shall be assessed to all**
16 **individuals upon whom cost sharing may be imposed for nonemergency services**
17 **provided by a hospital emergency department under federal Medicaid cost sharing**
18 **regulations.**

19 **(2) The copayment provided for in this Subpart shall not be assessed to any**
20 **individual who is under the age of eighteen, is pregnant, has a disability, or meets**
21 **any other exemption provided in 42 CFR 447.56.**

22 **(3) The department shall limit assessment of the copayment provided for in**
23 **this Subpart to Medicaid enrollees with income in excess of one hundred percent of**
24 **the federal poverty level.**

25 **C. The department shall allow denial of service for nonpayment of the**
26 **charges provided for in this Subpart as authorized in 42 CFR 447.52(e), subject to**
27 **the requirements of that regulation and other applicable provisions of federal**
28 **Medicaid cost sharing regulations.**

1 D. The amount of the copayment shall not exceed the maximum amount
2 permitted by federal Medicaid cost sharing regulations, including any annual
3 adjustment of that maximum as provided in those regulations.

4 §460.114. Administration of copayment; duties of the department and managed care
5 organizations

6 A. In implementing the copayment provided for in this Subpart, the
7 department, either directly or through the managed care organizations with which it
8 contracts, shall do all of the following:

9 (1) Provide notice to each Medicaid recipient who is subject to the
10 copayment provided for in this Subpart, at the time of enrollment and on a biannual
11 basis, that hospitals will collect a copayment when the recipient receives
12 nonemergency services at a hospital emergency department. The notice shall be
13 designed to educate Medicaid recipients about alternative healthcare settings for
14 primary and urgent care services available in the geographic area in which the
15 recipient resides.

16 (2)(a) Develop the standard definition of nonemergency services, consistent
17 with the provisions of this Subpart, along with a list of ICD-10 diagnosis codes that
18 are considered nonemergent in order to assist hospital emergency department
19 personnel in the assessment of the copayment required pursuant to this Subpart.

20 (b) No managed care organization shall expand the standard definition of
21 nonemergency services or the list of applicable ICD-10 diagnosis codes provided for
22 in this Paragraph.

23 (c) The department and the managed care organizations with which it
24 contracts shall use the standard definition and list of ICD-10 diagnosis codes
25 provided for in this Paragraph exclusively for purposes of complying with the
26 provisions of this Subpart, and shall not utilize the definition or list of diagnosis
27 codes for coverage determinations or any other purpose not specified in this Subpart.

28 (3) Make the standard definition of nonemergency services and list of
29 diagnosis codes provided for in Paragraph (2) of this Subsection available to

1 hospitals electronically through its website, and through the website of each managed
2 care organization.

3 (4)(a) Provide all of the following information through the Medicaid
4 eligibility verification system or other electronic means:

5 (i) Whether a Medicaid recipient is subject to the copayment requirement
6 provided for in this Subpart.

7 (ii) The name and contact information of the Medicaid recipient's primary
8 care provider.

9 (iii) A list of alternate sources of care available in the applicable geographic
10 area, consistent with the provisions of the state's contracts with the managed care
11 organizations, which can provide services to the Medicaid recipient in a timely
12 manner with the imposition of a lesser cost sharing amount or no cost sharing.

13 (b) The department shall make the information required by the provisions of
14 this Paragraph accessible to Medicaid providers on a real-time basis.

15 B. If the department or the managed care organization fails to provide to a
16 hospital the information required by Paragraph (A)(4) of this Section, then the
17 hospital shall not be required to charge the Medicaid recipient any copayment for
18 nonemergency services, and the department and managed care organization shall be
19 prohibited from reducing Medicaid reimbursement to the hospital by the amount of
20 the copayment for the encounter.

21 C. In any instance in which a managed care organization reduces
22 reimbursement to a provider by the amount of a copayment to which a Medicaid
23 recipient was not rightfully subject pursuant to the provisions of this Subpart, the
24 department shall assess a penalty on that managed care organization. The penalty
25 imposed under this Subsection shall not exceed two thousand five hundred dollars
26 per occurrence.

27 D.(1) The department shall make appropriate adjustments to the calculation
28 of the per-member per-month payments to managed care organizations in order to

1 account for anticipated utilization changes resulting from the implementation of the
2 provisions of this Subpart.

3 (2) The department shall not reduce per-member per-month payments to
4 managed care organizations or Medicaid reimbursement rates for any provider group
5 based solely upon the imposition of the copayment requirement provided for in this
6 Subpart.

7 (3) The department shall ensure that Medicaid reimbursement rates for
8 provider groups remain actuarially sound pursuant to the imposition of the
9 copayment requirement provided for in this Subpart.

10 §460.115. Reporting; program evaluation by legislative committees

11 A. On a semiannual basis, the department shall submit a report to the House
12 Committee on Appropriations, the Senate Committee on Finance, and the House and
13 Senate committees on health and welfare concerning the copayment requirement
14 provided for in this Subpart which encompasses all of the following information:

15 (1) The total number of emergency department visits per thousand-member
16 months for each managed care organization and for the fee-for-service component
17 of the Medicaid program.

18 (2) The total number of emergency department visits subject to the
19 imposition of a copayment per thousand-member months for each managed care
20 organization.

21 (3) Any other information concerning the copayment requirement for
22 nonemergency services provided by a hospital emergency department that the
23 secretary deems necessary or appropriate.

24 B. The House Committee on Appropriations, the Senate Committee on
25 Finance, the House Committee on Health and Welfare, and the Senate Committee
26 on Health and Welfare may meet individually or jointly to conduct hearings
27 concerning the data and other information presented in the report required by
28 Subsection A of this Section, and to evaluate the effectiveness of the copayment

1 requirement provided for in this Subpart in reducing inappropriate emergency
2 department utilization by Medicaid recipients.

3 §460.116. Construction of Subpart

4 A. Nothing in this Subpart shall be construed to limit a hospital's obligations
5 for screening and stabilizing treatment of an emergency medical condition under the
6 federal Emergency Treatment and Active Labor Act.

7 B. Nothing in this Subpart shall be construed to modify any obligation under
8 state or federal standards relating to the application of a prudent layperson standard
9 for payment or coverage of emergency medical services by any managed care
10 organization.

11 §460.117. Implementation; rules and regulations; submissions to federal Medicaid
12 agency

13 The secretary shall take all actions as are necessary to implement the
14 provisions of this Subpart. Such actions shall include, without limitation, the
15 following:

16 (1) Promulgation of rules and regulations in accordance with the
17 Administrative Procedure Act to facilitate assessment of copayments for
18 nonemergency services provided by a hospital emergency department.

19 (2) Submission to the Centers for Medicare and Medicaid Services of any
20 Medicaid waiver application or state plan amendment to facilitate assessment of
21 copayments for nonemergency services provided by a hospital emergency
22 department.

23 §460.118. Termination

24 The provisions of this Subpart shall terminate on January 1, 2021.

25 SUBPART C. MEDICAID COPAYMENTS FOR
26 CERTAIN PRESCRIPTION DRUGS

27 §460.121. Copayments; nonpreferred drugs

28 A. The department shall differentiate between preferred and nonpreferred
29 drugs and shall establish a copayment requirement in the Medicaid program for all

1 nonpreferred drugs, subject to the requirements of 42 U.S.C. 1396o and federal
2 Medicaid cost sharing regulations.

3 B. The copayment for nonpreferred drugs shall be assessed to all individuals
4 upon whom cost sharing for such drugs may be imposed under federal Medicaid cost
5 sharing regulations.

6 C. The amount of the copayment for nonpreferred drugs shall not exceed the
7 maximum amount permitted by federal Medicaid cost sharing regulations, including
8 any annual adjustment of that maximum as provided in those regulations.

9 §460.122. Denial of service for nonpayment

10 The department shall authorize a pharmacy to require an individual to pay the
11 copayment for a nonpreferred drug as a condition for receiving the drug if all of the
12 following conditions are met:

13 (1) The individual has family income above one hundred percent of the
14 federal poverty level.

15 (2) The individual is not part of an exempted group under 42 CFR 447.56.
16 §460.123. Implementation; rules and regulations; submissions to federal Medicaid
17 agency

18 The secretary shall take all actions as are necessary to implement the
19 provisions of this Subpart. Such actions shall include, without limitation, the
20 following:

21 (1) Promulgation of rules and regulations in accordance with the
22 Administrative Procedure Act to facilitate assessment of copayments for
23 nonpreferred drugs.

24 (2) Submission to the Centers for Medicare and Medicaid Services of any
25 Medicaid waiver application or state plan amendment to facilitate assessment of
26 copayments for nonpreferred drugs.

27 Section 2. The secretary of the Louisiana Department of Health shall take such
28 actions as are necessary to fully implement and effectuate the Medicaid copayment

1 requirements provided for in R.S. 46:460.111 et seq. and 460.121 et seq., as enacted by
2 Section 1 of this Act, on or before January 1, 2019.

3 Section 3. The secretary of the Louisiana Department of Health shall submit the first
4 semiannual report required by the provisions of R.S. 46:460.115(A), as enacted by Section
5 1 of this Act, on or before March 1, 2019.

6 Section 4. This Act shall become effective upon signature by the governor or, if not
7 signed by the governor, upon expiration of the time for bills to become law without signature
8 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
9 vetoed by the governor and subsequently approved by the legislature, this Act shall become
10 effective on the day following such approval.

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)]

HB 11 Original

2018 First Extraordinary Session

McFarland

Abstract: Requires copayments in the La. Medicaid program for nonemergency use of hospital emergency departments and for nonpreferred prescription drugs.

General Provisions

Proposed law establishes definitions and legislative findings relative to the medical assistance program of this state commonly known as Medicaid.

Proposed law requires the secretary of the La. Department of Health (LDH) to take such actions as are necessary to cause monies realized as cost savings or cost avoidance resulting from the following functions to be reinvested in the Medicaid program:

- (1) The efficiencies provided for in proposed law.
- (2) Savings achieved through administrative efficiencies in the Medicaid managed care program.
- (3) Amounts that managed care organizations rebate to LDH for not meeting the required medical loss ratio specified in contracts with the department.

Proposed law requires the secretary of LDH to prioritize reinvestment of such monies for the following purposes:

- (1) Enhancing primary care provider rates.
- (2) Enhancing access to primary care services.

- (3) Instituting and supporting evidence-based programs and services which encourage Medicaid enrollees to access health services in the most cost-efficient medically appropriate settings.

Proposed law requires the secretary of LDH to promulgate all administrative rules as are necessary to implement the provisions of proposed law.

Medicaid Recipient Copayments For Nonemergency Services Delivered In Hospital Emergency Departments

Proposed law provides the following definitions for purposes of proposed law relative to Medicaid recipient copayments for nonemergency services delivered in hospital emergency departments:

- (1) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in any of the following:
- (a) Placing the health of the individual or, for a pregnant woman, the health of the woman or her unborn child in serious jeopardy.
 - (b) Serious impairment to bodily functions.
 - (c) Serious dysfunction of any bodily organ or part.
- (2) "Emergency services" means inpatient and outpatient services that meet all of the following criteria:
- (a) Are furnished by a provider who is qualified to furnish such services under present law.
 - (b) Are needed to evaluate or stabilize an emergency medical condition as defined in proposed law.
- (3) "Nonemergency services" means any care or services that are not considered emergency services as defined in proposed law. However, proposed law provides that "nonemergency services" shall not include any services furnished in a hospital emergency department that are required to be provided as an appropriate medical screening examination or stabilizing examination and treatment under the federal Emergency Treatment and Active Labor Act.

Proposed law requires LDH to establish a copayment requirement in the La. Medicaid program for nonemergency services provided by a hospital emergency department, subject to the requirements and limitations of federal Medicaid regulations.

Proposed law provides that the copayment shall be assessed to all individuals upon whom cost sharing may be imposed for nonemergency services provided by a hospital emergency department under federal Medicaid regulations.

Proposed law stipulates that the copayment shall not be assessed to any individual who is under the age of 18, is pregnant, has a disability, or meets any other exemption provided in the applicable federal Medicaid regulation, 42 CFR 447.56.

Proposed law stipulates that the copayment shall be assessed only to Medicaid enrollees with income in excess of 100% of the federal poverty level.

Proposed law authorizes denial of service for nonpayment of the required copayment, subject to federal limitations.

Proposed law provides that the amount of the copayment shall not exceed the maximum amount permitted by federal Medicaid cost sharing regulations (\$8 per nonemergency visit for Medicaid enrollees whose income is below 150% of the federal poverty level; no per-visit limit for other nonexempt Medicaid enrollees, subject to an annual maximum).

Proposed law requires LDH, either directly or through the Medicaid managed care organizations (MCOs) with which it contracts, to do all of the following:

- (1) Provide notice to each Medicaid recipient who is subject to proposed law, at the time of enrollment and on a biannual basis, that hospitals will collect a copayment when the recipient receives nonemergency services at a hospital emergency department. Proposed law requires that the notice be designed to educate Medicaid recipients about alternative healthcare settings for primary and urgent care services.
- (2) Develop the standard definition of nonemergency services, consistent with the provisions of proposed law, along with a list of diagnosis codes that are considered nonemergent in order to assist hospital emergency department personnel in the assessment of the copayment required by proposed law.
- (3) Make the standard definition of nonemergency services and list of diagnosis codes available to hospitals electronically through its website, and through the website of each MCO.
- (4) Make available to Medicaid providers electronically, and on a real-time basis, all of the following information:
 - (a) Whether a Medicaid recipient is subject to the copayment requirement provided for in proposed law.
 - (b) The name and contact information of the Medicaid recipient's primary care provider.
 - (c) A list of alternate sources of care available in the applicable geographic area which can provide services in a timely manner with the imposition of a lesser cost sharing amount or no cost sharing.

Proposed law provides that if LDH or the MCO fails to provide to a hospital the information required by proposed law, then the hospital shall not be required to charge the Medicaid recipient any copayment for nonemergency services, and LDH and the MCO shall be prohibited from reducing Medicaid reimbursement to the hospital by the amount of the copayment for the encounter.

Proposed law provides that in any instance in which an MCO reduces reimbursement to a provider by the amount of a copayment to which a Medicaid recipient was not rightfully subject pursuant to proposed law, LDH shall assess a penalty on that MCO not exceeding \$2,500 per occurrence.

Proposed law prohibits MCOs from expanding the standard definition of nonemergency services or the list of nonemergent diagnosis codes provided for in proposed law. Requires that LDH and the MCOs use this standard definition and list of diagnosis codes exclusively for purposes of complying with proposed law, and prohibits their use for any purpose not specified in proposed law.

Proposed law requires that LDH, on or before March 1, 2019, and semiannually thereafter, submit a report to the House Committee on Appropriations, the Senate Committee on

Finance, and the legislative committees on health and welfare encompassing all of the following information:

- (1) The total number of emergency department visits per thousand-member months for each managed care organization and for the fee-for-service component of the Medicaid program.
- (2) The total number of emergency department visits subject to the imposition of a copayment per thousand-member months for each managed care organization.
- (3) Any other information concerning the copayment requirement for nonemergency services provided by a hospital emergency department that the secretary deems necessary or appropriate.

Proposed law stipulates that nothing therein shall be construed to limit a hospital's obligations for screening and stabilizing treatment of an emergency medical condition under the federal Emergency Treatment and Active Labor Act; or to modify any obligation relating to the application of a prudent layperson standard for payment or coverage of emergency medical services by any MCO.

Proposed law requires the secretary of LDH to take such actions as are necessary to fully implement and effectuate the Medicaid copayment for nonemergency use of a hospital emergency department, as provided in proposed law, on or before Jan. 1, 2019.

Proposed law terminates on Jan. 1, 2021.

Medicaid Recipient Copayments For Nonpreferred Drugs

Proposed law requires LDH to differentiate between preferred and nonpreferred drugs and to institute a copayment requirement in the Medicaid program for all nonpreferred drugs, subject to the requirements and limitations of federal Medicaid regulations.

Proposed law provides that the copayment shall be assessed to all individuals upon whom cost sharing for such drugs may be imposed under federal Medicaid regulations.

Proposed law provides that the amount of the copayment for nonpreferred drugs shall not exceed the maximum amounts permitted by federal Medicaid regulations.

Proposed law requires LDH to authorize a pharmacy to require an individual to pay the copayment for a nonpreferred drug as a condition for receiving the drug if all of the following conditions are met:

- (1) The individual has family income above 100% of the federal poverty level.
- (2) The individual is not part of an exempted group under 42 CFR 447.56.

Proposed law requires the secretary of LDH to take such actions as are necessary to fully implement and effectuate the Medicaid copayment for nonpreferred drugs, as provided in proposed law, on or before Jan. 1, 2019.

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

(Adds R.S. 46:460.53 and 460.101-460.123)