DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Prohibition of Provider Steering of Medicaid Recipients
(LAC 50:I.Chapter 13)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:I.Chapter 13 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing administers the Medicaid Program which provides health care coverage to eligible recipients through Medicaid contracted managed care entities and/or through Medicaid fee-for-service.

The department hereby adopts provisions prohibiting Medicaid providers and contracted managed care entities from engaging in provider steering in order to ensure the integrity of Medicaid recipients' freedom of choice in choosing a particular health plan in which to enroll and, when eligible, the freedom of choice in deciding whether or not to receive care through Medicaid fee-for-service. This Emergency Rule will also establish criteria for the sanctioning of providers who engage in provider steering of Medicaid recipients.

This action is being taken to avoid federal sanctions from the Centers for Medicare and Medicaid Services (CMS) by ensuring the integrity of Medicaid recipients' freedom of choice in choosing a health care provider, and to ensure compliance with the federal regulations which apply to contract requirements contained in 42 CFR §438.6 and the protection of enrollee rights set forth in 42 CFR §438.100 et seq. It is estimated that implementation of this Emergency Rule will have no fiscal impact to the Medicaid Program in state fiscal year 2013-2014.

Effective December 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions in the Medicaid Program governing the prohibition of provider steering of Medicaid Recipients.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part I. Administration
Subpart 1. General Provisions
Chapter 13. Prohibition of Provider Steering

§1301. General Provisions

A. Definitions

Provider Steering—any conduct by a Medicaid contracted managed care entity or health plan, including shared savings plans and capitated plans, any health care provider enrolled therein, or any Medicaid enrolled provider which is intended to recommend, or can be reasonably concluded to lead to a recommendation of, any specific or type of participating managed care health plan or the decision as to whether or not to enroll in managed care health plan or Medicaid fee-for-service (legacy Medicaid). This shall include, but is not limited to the practice of offering recipients incentives for selecting one managed care health plan over another such plan and the practice of assisting a recipient in any way, (via utilization of fax, office telephone, computer in office, etc.) in the decision of, or enrolling into, a specific managed care health plan.

B. These provisions shall not restrict the ability of a provider to inform recipients of all health plans in which the provider participates, nor shall it restrict the ability of a provider to inform recipients of the benefits, services, and specialty care offered by the various plans in which the provider participates.

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, Bureau of Health Services Financing, LR 39:

§1303. Sanctions

A. In the event the department determines that any provider has steered a Medicaid recipient to enroll with a particular managed care health plan or to participate in Medicaid fee-for-service, the department may impose any of the following sanctions as applicable.

1. A provider may be immediately disenrolled from participation in the Medicaid Program and any managed care health plan may immediately terminate its provider services agreement with the provider.

2. If a provider has steered a Medicaid recipient to enroll in a particular managed care health plan, payments to the provider for services rendered to the Medicaid recipient for the time period the recipient's care was coordinated by the health plan may be recouped.

3. If a provider has steered a Medicaid recipient to participate in Medicaid fee-for-service, payments to the provider for services rendered to the recipient for the time period the recipient's care was paid for through Medicaid fee-for-service may be recouped.

4. A provider may be assessed a monetary sanction of up to $5,000 for each recipient steered to join a particular managed care health plan or to participate in Medicaid fee-for-service.

5. A provider may be required to submit a letter to the particular Medicaid recipient notifying him/her of the imposed sanction and his/her right to freely choose another participating managed care health plan or, if eligible, participate in Medicaid fee-for-service.

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, Bureau of Health Services Financing, LR 39:

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert
Secretary

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