

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Medicaid Eligibility
Incurred Medical Expense Deductions
(LAC 50:III.16105)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to repeal the May 20, 2003 Rule governing incurred medical expenses in the Medicaid Program and proposes to adopt LAC 50:III.16105 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.

Pursuant to 42 CFR 435.725, medical expenses not subject to third party payment that are incurred by nursing facility residents, including Medicare and other health insurance premiums, deductibles or coinsurance charges and necessary medical or remedial care recognized under state law, but not covered under the Medicaid State Plan are budgeted in the determination of the patient liability for nursing facility care.

In compliance with 42 CFR 435.725, the Department of Health and Hospitals, Bureau of Health Services Financing currently allows deductions for incurred medical expenses in the determination of the patient liability to the nursing facility. The department has now determined that it is necessary to repeal the May 20, 2003 Rule

governing incurred medical expense deductions. This proposed Rule will also revise these provisions in order to impose reasonable limits on incurred medical expense deductions, and repromulgate the provisions in a codified format for inclusion in the *Louisiana Administrative Code*.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 9. Long-Term Care Eligibility

Chapter 161. General Provisions

§16105. Incurred Medical Expense Deductions

A. Allowable Deductions. The following criteria shall apply to all incurred medical expense deductions.

1. The deductions must be for an expense incurred by a nursing facility resident who is eligible for Medicaid vendor payment to the nursing facility.

2. Each deduction must be for a service or an item prescribed by a medical professional (e.g., a physician, a dentist, an optometrist, etc.) as medically necessary, and approved by the attending physician to be included as part of the facility's plan of care for the resident.

B. Non-Allowable Deductions. Deductions will not be allowed for the following incurred medical expenses:

1. expenses payable under Medicaid, except when documentation is presented to verify the expense was denied by the Medicaid program due to service limitations;

2. expenses for services, equipment or supplies which are not medically necessary;

3. expenses for services, equipment or supplies provided as part of the nursing facility reimbursement rate; or

4. monthly fees for pre-paid medical or dental service plans including but not limited to those referred to as "concierge plans."

C. Reasonable Limits. The following reasonable limits apply to incurred medical and remedial expense deductions.

1. The deduction shall be made at the lessor of:

a. 80 percent of the provider's billed charges;

b. the Medicaid fee schedule; or

c. 80 percent of the Louisiana Region 99 Par Medicare fee schedule.

2. Deductions for medical and remedial care expenses incurred as a result of the imposition of a transfer of assets penalty period is limited to zero.

D. Incurred medical expense deduction amounts will be evaluated annually for consideration of increases in the cost of medical or remedial services and supplies.

E. Nursing facilities shall not enter into profit sharing agreements with other providers for any services, supplies or equipment provided for under the incurred medical expense deductions.

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 42:

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.

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 no impact on family functioning, stability or autonomy as described in R.S. 49:972.

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 no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

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 the staffing level requirements or qualifications required to provide the same level of

service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, May 26, 2016 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary