

NOTICE OF INTENT

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

**Pharmacy Benefits Management Program
Managed Care Supplemental Rebates
(LAC 50:XXIX.1103)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:XXIX.1103 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.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing The Optimal PDL Solution (TOP\$) State Supplemental Rebate Agreement Program in order to include pharmacy utilization of managed care organizations (MCOs) that participate in the Healthy Louisiana Program and implement a single state managed preferred drug list to maximize supplemental rebates on MCO utilization.

Title 50

**PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXIX. Pharmacy**

Chapter 11. State Supplemental Rebate Agreement Program

§1103. Managed Care Organization Utilization

A. Effective January 1, 2019, the TOP\$ State Supplemental Rebate Agreement Program shall include pharmacy utilization of

managed care organizations (MCOs) that participate in the Healthy Louisiana Program for state supplemental drug rebates.

1. The Healthy Louisiana Program's contracts with the participating MCOs shall:

a. allow inclusion of the pharmacy utilization data for supplemental rebate purposes; and

b. mandate that each participating MCO shall align their respective formulary(ies) and/or preferred drug list (PDL), as applicable, to the fee-for-service (FFS) preferred drug list. MCO prior authorization criteria shall not be more restrictive than FFS.

B. The Department of Health shall implement a single state-managed PDL for all participating MCOs in order to maximize the supplemental and federal rebates on MCO utilization.

1. The MCOs shall not enter into agreements with manufacturers of drugs listed in the single PDL to acquire discounts or rebates.

C. Supplemental rebates on MCO utilization shall be excluded from best price or average manufacturer price (AMP) calculations.

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, Bureau of Health Services Financing, LR 44:

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 and 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, September 27, 2018 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

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing
Statement: Veronica Dent Dept.: Health
Phone: 342-3238 Office: Bureau of Health Services
Financing

Return P.O. Box 91030
Address: Baton Rouge, LA Rule Title: Pharmacy Benefits
Management Program
Managed Care
Supplemental Rebates

Date Rule Takes Effect: November 20, 2018

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (SUMMARY)

It is anticipated that implementation of this proposed rule will result in estimated state general fund net programmatic costs of approximately \$4,755,634 for FY 18-19 and net savings of \$2,051,000 for FY 19-20 and \$2,051,000 for FY 20-21. The required state general fund match will be offset by the anticipated revenue collections from the Medicaid Assistance Trust Fund premium taxes in the amount of approximately \$1,100,000 in FY 18-19, \$2,700,000 in FY 19-20, \$2,700,000 in FY 20-21. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.67 percent in FY 18-19 for the projected non-expansion population, and an FMAP rate of 93.5 percent in FY 18-19, 91.5 percent in FY 19-20 and 90.0 in FY 20-21 percent for the projected expansion population.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$8,704,798 for FY 18-19 and reduce federal revenue collections by approximately \$3,809,000 for FY 19-20 and \$3,809,000 for FY 20-21. The proposed rule will also increase revenue collections by approximately \$1,100,000 for FY 18-19, \$2,700,000 for FY 19-20 and FY 20-21 from the Medicaid Assistance Trust Fund premium taxes. It is anticipated that \$216 will be expended in FY 18-19 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.67 percent in FY 18-19 for the projected non-expansion population, and an FMAP rate of 93.5 percent in FY 18-19, 91.5 percent in FY 19-20 and 90.0 in FY 20-21 percent for the projected expansion population.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing The Optimal PDL Solution (TOPS) State Supplemental Rebate Agreement Program in order for the state to invoice for supplemental rebates on pharmacy services covered under the Managed Care Program and paid by managed care organizations (MCOs). This proposed rule will also implement a statewide single preferred drug list (PDL) to maximize the supplemental rebates collected by the state. The single PDL will align preferred drugs across all MCOs and fee-for-service delivery models. The proposed rule will be beneficial to prescribers and recipients because it will simplify the process. The proposed rule will have

a net impact to MCOs because although they will lose revenue from the loss of the rebates, they will be reimbursed at a higher capitation rate (PMPM) which will offset the revenue loss from the rebates. It is anticipated that implementation of this proposed rule will result in a net increase in programmatic expenditures in the pharmacy benefits management program by approximately \$13,460,000 for FY 18-19 and a net reduction in expenditures by approximately \$5,860,000 for FY 19-20 and \$5,860,000 for FY 20-21.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Agency Head
or Designee

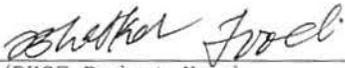


Legislative Fiscal Officer
or Designee

Jen Steele, Medicaid Director

Typed name and Title of
Agency Head or Designee

Date of Signature



LDH/BHSF Budget Head



Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed rule amends the provisions governing The Optimal PDL Solution (TOPS) State Supplemental Rebate Agreement Program in order to include pharmacy utilization of managed care organizations (MCOs) that participate in the Healthy Louisiana Program and to implement a single state managed preferred drug list to maximize supplemental rebates on MCO utilization.

- B. Summarize the circumstances that require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing The Optimal PDL Solution (TOPS) State Supplemental Rebate Agreement Program in order to include pharmacy utilization of managed care organizations (MCOs) that participate in the Healthy Louisiana Program, and to implement a single state managed preferred drug list to maximize supplemental rebates on MCO utilization.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session.

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

This proposed rule will result in a net increase of programmatic costs of approximately 13,460,432 for FY 18-19 and a net reduction in programmatic expenditures by approximately \$5,860,000 for FY 19-20 and \$5,860,000 for FY 20-21. In FY 18-19, \$432 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) If yes, attach documentation.
(b) If no, provide justification as to why this rule change should be published at this time.

Act 2 of the 2018 Second Extraordinary Session of the Louisiana Legislature allocated funds to the Medical Vendor Program for payments to providers and the operation of the Medicaid Program, and thereby, authorizes the expenditure of these funds. This proposed Rule should be published at this time to maximize the supplemental and federal rebate opportunities.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 18-19	FY 19-20	FY 20-21
PERSONAL SERVICES			
OPERATING EXPENSES	\$432	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	\$13,460,000	(\$5,860,000)	(\$5,860,000)
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$13,460,432	(\$5,860,000)	(\$5,860,000)

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The expenses reflected above are the estimated increases in expenditures in the Medicaid program for FY 18-19 and reductions in FY 19-20 and FY 20-21. In FY 18-19, \$432 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

3. Sources of funding for implementing the proposed rule or rule change.

Source	FY 18-19	FY 19-20	FY 20-21
STATE GENERAL FUND	\$3,655,634	(\$4,751,000)	(\$4,751,000)
SELF-GENERATED			
FEDERAL FUND	\$8,704,798	(\$3,809,000)	(\$3,809,000)
OTHER (Specify) <i>Medicaid Assistance Trust Fund Premium Taxes used to offset the State General Fund</i>	\$1,100,000	\$2,700,000	\$2,700,000
Total	\$13,460,432	(\$5,860,000)	(\$5,860,000)

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 18-19	FY 19-20	FY 20-21
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS* <i>Medicaid Assistance Trust Fund Premium Taxes used to offset the State General Fund</i>	\$1,100,000	\$2,700,000	\$2,700,000
FEDERAL FUNDS	\$8,704,798	(\$3,809,000)	(\$3,809,000)
LOCAL FUNDS			
Total	\$9,804,798	(\$1,109,000)	(\$1,109,000)

**Specify the particular fund being impacted*

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

The amounts reflected above are the estimated increase in the federal share of programmatic expenditures for the Medicaid program in FY 18-19 and reductions in FY 19-20 and FY 20-21. In FY 18-19, \$216 is included for the federal expense for promulgation of this proposed rule and the final rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

This proposed rule amends the provisions governing The Optimal PDL Solution (TOPS) State Supplemental Rebate Agreement Program in order for the state to invoice for supplemental rebates on pharmacy services covered under the Managed Care Program and paid by managed care organizations (MCOs). This proposed rule will also implement a statewide single preferred drug list (PDL) to maximize the supplemental rebates collected by the state. The single PDL will align preferred drugs across all MCOs and fee-for-service delivery models.

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

The proposed rule will be beneficial to prescribers and recipients because it will simplify the process. The proposed rule will have a net impact to MCOs because although they will lose revenue from the loss of the rebates, they will be reimbursed at a higher capitation rate (PMPM) which will offset the revenue loss from the rebates. It is anticipated that implementation of this proposed rule will result in a net increase in programmatic expenditures in the pharmacy benefits management program by approximately \$13,460,000 for FY 18-19 and a net reduction in expenditures by approximately \$5,860,000 for FY 19-20 and \$5,860,000 for FY 20-21.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

This rule has no known effect on competition and employment.