

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Third Party Liability Pay and Chase (LAC 50:I.8301)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:I.8301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act (the Act). This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bipartisan Budget Act of 2018 (BBA) amended section 1902(a)(25)(E) of the Act to require states to use standard coordination of benefits cost avoidance when processing claims for prenatal services and implemented a "wait and see" period of 100 days for claims associated with medical support enforcement. In compliance with the BBA, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing recovery for claims involving third party liability in order to ensure that the current pay and chase methodology is reflected in the *Louisiana Administrative Code*.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 9. Recovery

Chapter 83. Third Party Liability

Subchapter A. Claims

§8301. Pay and Chase

A. ...

B. Medicaid claims for services covered under the State Plan will be cost avoided when there is probable third party liability unless the claim is for one of the following services:

1. primary preventive pediatric care diagnoses are confined to those listed under *Diagnosis Codes Related to Preventive Pediatric Care Services* at www.lamedicaid.com;

a. Individuals under age 21 qualify; and

b. Hospitals are not included and must continue to file claims with the health insurance carriers;

2. early and periodic screening, diagnosis and treatment (EPSDT) medical, vision, and hearing services;

3. EPSDT dental services;

4. EPSDT services to children with disabilities (formerly referred to as school-based health services) which result from screening and are rendered by school boards;

5. services which are a result of an EPSDT referral, indicated by entering "Y" in block 24H of the CMS-1500 claim form, sometimes called HCFA-1500, or "1" as a condition code on the UB-92 (form locators 24 through 30); and

6. services for Medicaid eligibles whose health insurance is provided by an absent parent who is under the jurisdiction of the state child support enforcement agency are subject to a "wait and see period" that was effective April 1, 2021.

a. *Wait and See*—payment of a claim only after documentation is attached to a hard copy claim and submitted to the state's fiscal intermediary demonstrating that 100 days have elapsed since the provider billed the responsible third party and remains to be paid.

C. In processing these claims, the Medicaid agency will pay the claim and seek reimbursement from liable third parties, utilizing the claims method of payment called "pay and chase".

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 Human Resources, Office of Family Security, LR 13:578 (October 1978), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 17:781 (August 1991), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:848 (May 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

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

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

Small Business Analysis

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 will have no impact on small businesses.

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 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.

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 August 29, 2023.

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 August 9, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on August 24, 2023 in Room 173 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 August 9, 2023. 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.

Stephen R. Russo, JD

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
Address: P.O. Box 91030 Rule
Title: Third Party Liability

Baton Rouge, LA Pay and Chase

Date Rule
Takes Effect: October 20, 2023

SUMMARY
(Use complete sentences)

In accordance with Section 961 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 STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND 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 have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 23-24. It is anticipated that \$324 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule amends the provisions governing recovery for claims involving third party liability in order to ensure that the current pay and chase methodology is reflected in the *Louisiana Administrative Code* (LAC). This proposed rule ensures that the current claims methodology, implemented by Louisiana Medicaid in 2021 in compliance with the Bipartisan Budget Act of 2018, is added to the LAC. Implementation of this proposed rule will not result in costs to providers or small businesses in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by ensuring that the administrative rule aligns with federal regulations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Signature of Agency Head or Designee

Tara A. LeBlanc, Medicaid Executive Director
Typed Name & Title of Agency Head or Designee

07/05/2023
Date of Signature

Debbie Thomas, Deputy Fiscal Officer
Legislative Fiscal Officer or Designee

07/07/2023
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 deliberation 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 recovery for claims involving third party liability in order to ensure that the current pay and chase methodology is reflected in the *Louisiana Administrative Code* (LAC). This proposed rule ensures that the current claims methodology, implemented by Louisiana Medicaid in 2021 in compliance with the Bipartisan Budget Act of 2018, is added to the LAC.

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

The Bipartisan Budget Act of 2018 (BBA) amended section 1902(a)(25)(E) of the Social Security Act to require states to use standard coordination of benefits cost avoidance when processing claims for prenatal services and implemented a "wait and see" period of 100 days for claims associated with medical support enforcement. In compliance with the BBA, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing recovery for claims involving third party liability in order to ensure that the current pay and chase methodology is reflected in the *Louisiana Administrative Code*.

- 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.

No. It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. In FY 23-24, \$648 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) _____ Yes. If yes, attach documentation.

(b) _____ NO. If no, provide justification as to why this rule change should be published at this time

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

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

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

COSTS	FY 24	FY 25	FY 26
Personal Services			
Operating Expenses	\$648	\$0	\$0
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	\$648	\$0	\$0
POSITIONS (#)			

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.

In FY 23-24, \$648 will be spent 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 24	FY 25	FY 26
State General Fund	\$324	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds	\$324	\$0	\$0
Other (Specify)			
TOTAL	\$648	\$0	\$0

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 THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments 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.

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

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

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

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

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

REVENUE INCREASE/DECREASE	FY 24	FY 25	FY 26
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	\$324	\$0	\$0
Local Funds			
TOTAL	\$324	\$0	\$0

*Specify the particular fund being impacted.

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

In FY 23-24, \$324 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and final rule.

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS

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

This proposed rule amends the provisions governing recovery for claims involving third party liability in order to ensure that the current pay and chase methodology is reflected in the *Louisiana Administrative Code* (LAC). This proposed rule ensures that the current claims methodology, implemented by Louisiana Medicaid in 2021 in compliance with the Bipartisan Budget Act of 2018, is added to the LAC.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Implementation of this proposed rule will not result in costs to providers or small businesses in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by ensuring that the administrative rule aligns with federal regulations.

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.