

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Medicaid Eligibility
Recipient Appeals and Fair Hearing Requests
(LAC 50:III.101)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to repeal and replace the provisions of Section T-100 of the *Medicaid Eligibility Manual* governing Fair Hearings which was promulgated in the May 20, 1996 Rule, and to adopt LAC 50:III.101 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 and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated the *Medicaid Eligibility Manual* in its entirety by reference in May 1996, including Section T-100 addressing fair hearings (*Louisiana Register*, Volume 23, Number 5). The provisions governing recipient appeals and fair hearings was also incorporated into the Medicaid State Plan. The department has now determined that these provisions are outdated and require revisions to ensure that the provisions are consistent with current Medicaid Program operations. This proposed Rule will also satisfy public notice requirements in order to submit a corresponding amendment to the Medicaid State Plan to make the necessary updates.

Therefore, the department proposes to repeal and replace the provisions of Section T-100 of the *Medicaid Eligibility Manual* governing fair hearings in order to repromulgate these provisions in a clear and concise manner for inclusion in the *Louisiana Administrative Code* in Title 50, Part III governing Medicaid eligibility, and to meet the technical requirements for submission of a corresponding Medicaid State Plan amendment.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part III. Eligibility Subpart 1. General Administration

Chapter 1. General Provisions

§101. Fair Hearings

A. Every applicant for, and enrollee of, Medicaid Program benefits has the right to appeal an agency action or decision, and has the right to request a fair hearing in the presence of an impartial hearing officer.

1. *Action*—a termination, suspension or reduction of Medicaid eligibility or covered services. This includes terminations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by a State (Medicaid Program) with regard to the preadmission screening and annual resident review requirements of §1917(e)(7) of the Social Security Act.

2. *Exception*. Enrollees are not entitled to a fair hearing if the sole issue is a federal or state law requiring an

automatic change adversely affecting some or all Medicaid recipients.

2. Applicants and enrollees shall be informed in writing of the right to request a fair hearing and of the procedure to do so.

B. The Medicaid Program may delegate the responsibility for conducting fair hearings to another state agency. Any agency with delegated authority to conduct fair hearings on behalf of the Medicaid Program shall comply with the federal notice and fair hearing requirements pursuant to 42 CFR 431, Subpart E, and all other Medicaid Program and state regulations governing fair hearings.

C. Applicants and enrollees must request a fair hearing within 30 days of the date of the adequate and/or timely decision notice issued by the Medicaid Program or its designee.

D. Maintenance of Services Pending a Fair Hearing Request

1. If the Medicaid Program sends a notice to the recipient as required under 42 CFR 431.211 or §431.214, and the recipient requests a hearing before the date of action, the recipient's services will not be terminated or reduced by the Medicaid Program until a decision is rendered after the hearing unless:

a. it is determined at the hearing that the sole issue is one of federal or state law or policy; and

b. the recipient is promptly informed by Medicaid, in writing, that the services are to be terminated or reduced pending the hearing decision.

2. If the Medicaid Program's action is sustained by the hearing decision, recovery procedures may be instituted against the applicant/recipient to recoup the cost of any services furnished, to the extent they were furnished solely by reason of this §101.D.

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, April 28, 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

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing

Statement: Dee Budgewater
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Dept.: Health and Hospitals
Office: Bureau of Health Services
Financing

Return P.O. Box 91030
Address: Baton Rouge, LA

Rule Title: Medicaid Eligibility
Recipient Appeals and Fair
Hearing Requests

Date Rule Takes Effect: June 20, 2016

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.

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

I. *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 15-16. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 14-15 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 not affect revenue collections other than the federal share of the promulgation costs for FY 15-16. It is anticipated that \$270 will be collected in FY 15-16 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 OR
NON-GOVERNMENTAL GROUPS (Summary)

This proposed Rule proposes to repeal and replace the provisions governing recipient appeals and fair hearings in the May 20, 1996 Rule in order to update the provisions to be consistent with current operations, and to repromulgate the provisions in a clear and concise manner for inclusion in the Louisiana Administrative Code. It is anticipated that implementation of this proposed rule will have no economic cost or benefit to the Medicaid Program for FY 15-16, FY 16-17 and FY 17-18.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

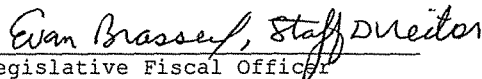
This rule has no known effect on competition and employment.



Signature of Agency Head
or Designee

Jen Steele, Interim Medicaid Director

Typed name and Title of
Agency Head or Designee



Legislative Fiscal Officer
or Designee

3/10/16

Date of Signature



DHH/BHSF Budget Head

03/10/16

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 proposes to repeal and replace the provisions governing recipient appeals and fair hearings in the May 20, 1996 Rule in order to update the provisions to be consistent with current operations, and to repromulgate the provisions in a clear and concise manner for inclusion in the Louisiana Administrative Code.

- 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 and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated the Medicaid Eligibility Manual in its entirety by reference in May 1996, including Section T-100 addressing fair hearings (Louisiana Register, Volume 23, Number 5). The provisions governing recipient appeals and fair hearings was also incorporated into the Medicaid State Plan. The department has now determined that these provisions are outdated and require revisions to ensure that the provisions are consistent with current Medicaid Program operations. This proposed Rule will also satisfy public notice requirements in order to submit a corresponding amendment to the Medicaid State Plan to make the necessary updates.

Therefore, the department proposes to repeal and replace the provisions of Section T-100 of the Medicaid Eligibility Manual governing fair hearings in order to repromulgate these provisions in a clear and concise manner for inclusion in the Louisiana Administrative Code in Title 50, Part III governing Medicaid eligibility, and to meet the technical requirements for submission of a corresponding Medicaid State Plan amendment.

- 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 15-16. It is anticipated that \$540 will be expended in FY 15-16 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.

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 15-16	FY 16-17	FY 17-18
PERSONAL SERVICES			
OPERATING EXPENSES	\$540	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$540	\$0	\$0

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 15-16, \$540 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 15-16	FY 16-17	FY 17-18
STATE GENERAL FUND	\$270	\$0	\$0
SELF-GENERATED			
FEDERAL FUND	\$270	\$0	\$0
OTHER (Specify)			
Total	\$540	\$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 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 15-16	FY 16-17	FY 17-18
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$270	\$0	\$0
LOCAL FUNDS			
Total	\$270	\$0	\$0

**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.

In FY 15-16, \$270 will be collected for the federal share of the administrative 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 proposes to repeal and replace the provisions governing recipient appeals and fair hearings in the May 20, 1996 Rule in order to update the provisions to be consistent with current operations, and to repromulgate the provisions in a clear and concise manner for inclusion in the Louisiana Administrative Code.

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

It is anticipated that implementation of this proposed rule will have no economic cost or benefit to the Medicaid Program for FY 15-16, FY 16-17 and FY 17-18.

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.