

**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 The department has now determined that these provisions are outdated and require revisions to ensure that the provisions are consistent with current Medicaid Program operations.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 Louisiana 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 the Medicaid Program, 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