

**NOTICE OF INTENT**

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

**Medicaid Eligibility  
Incurred Medical and Remedial Care Expenses  
(LAC 50:III.941)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:III.941 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.

Title 42 of the Code of Federal Regulations Part 435 Subparts H and I requires that income assessments of individuals who are institutionalized and enrolled in Medicaid or receiving home and community-based services furnished under a waiver must deduct certain medical and remedial care expenses incurred for their care, subject to the reasonable limits, from the individual's income in the calculation of patient liability to the institution. In compliance with 42 C.F.R. Part 435 Subparts H and I, the Department of Health, Bureau of Health Services Financing, proposes to adopt provisions governing incurred medical and remedial care expenses in the determination of financial eligibility for the Medical Assistance Program in order to deduct expenses incurred for necessary medical and

remedial care, subject to the reasonable limits, from the individual's income when calculating patient liability to an institution and to limit the time institutions have to report these expenses.

**Title 50**  
**PUBLIC HEALTH-MEDICAL ASSISTANCE**  
**Part III. Eligibility**  
**Subpart 1. General Administration**

**Chapter 9. Financial Eligibility**

**Subchapter D. Incurred Medical**

**§941. Incurred Medical and Remedial Care Expenses**

A. In accordance with 42 C.F.R. Part 435 Subparts H and I, certain medical and remedial care expenses incurred by institutionalized individuals and individuals receiving home and community-based services furnished under a waiver, subject to the reasonable limits specified herein, are deducted from the individual's income in the calculation of patient liability.

B. Reasonable limits imposed are:

1. For medically necessary care, services, and items not paid under the Medicaid State Plan or, if covered under the Medicaid State Plan, denied due to service limitations.

a. The medical or remedial care must be:

i. recognized under state law;

ii. medically necessary as verified by an

independent licensed physician or medical director; and

iii. incurred no earlier than three months preceding the month in which it is reported to the state; and

b. The medical or remedial care cannot be:

i. for cosmetic or elective purposes, except when medically necessary as verified by an independent licensed physician or medical director; and/or

ii. for payment of a medical or dental service plan that has not been approved by the Department of Insurance in accordance with the Louisiana Insurance Code, Title 22 of the *Louisiana Revised Statutes*.

2. The deduction for medical and remedial care expenses that were incurred as a result of imposition of transfer of assets penalty period is limited to \$0.

3. The deduction for medical and remedial care expenses that were incurred as a result of the individual's equity interest in the home exceeding the limit established under 42 U.S.C. §139p(f) is limited to \$0.

4. The deduction for medical or remedial care expenses that were incurred during a period when the individual is not subject to patient liability is limited to \$0.

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 50:

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 may have a negative impact on family functioning, stability and autonomy as described in R.S. 49:972 as it may result in some incurred medical and remedial care expenses not being submitted by providers in a timely enough manner to be deducted from the patient's liability calculation.

**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 may have a negative impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it may result in some incurred medical and remedial care expenses not being submitted by providers in a timely enough manner to be deducted from the patient's liability calculation.

### **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 Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 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 November 9, 2023. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on November 28, 2023 in Room 118 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 November 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

LDH Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

Person Preparing Statement:	<u>Lyrica Johnson</u>	Dept.:	<u>Health</u>
Phone:	<u>342-6375</u>	Office:	<u>Bureau of Health Services Financing</u>
Return Address:	<u>P.O. Box 91030</u>	Rule Title:	<u>Medicaid Eligibility</u>
	<u>Baton Rouge LA</u>		<u>Incurred Medical and Remedial Care Expenses</u>
		Date Rule Takes Effect:	<u>January 20, 2024</u>

**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 may have an indeterminable savings for FY 23-24, FY 24-25, and FY 25-26. 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.

This proposed rule adopts provisions governing incurred medical and remedial care expenses for beneficiaries who are institutionalized and enrolled in Medicaid or receiving home and community-based services furnished under a waiver in order to deduct certain medical and remedial care expenses incurred for their care, subject to the reasonable limits, from the individual's income in the calculation of patient liability to an institution, in compliance with Title 42 of the Code of Federal Regulations Part 435 Subparts H and I, and to limit the amount of time institutions have to report these expenses to three months after they occurred.

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

Implementation of this proposed rule may result in an indeterminable reduction on revenue collections for FY 23-24, FY 24-25, and FY 25-26. 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 adopts provisions governing incurred medical and remedial care expenses for beneficiaries who are institutionalized and enrolled in Medicaid or receiving home and community-based services furnished under a waiver in order to deduct certain medical and remedial care expenses incurred for their care, subject to the reasonable limits, from the individual's income in the calculation of patient liability to an institution, in compliance with Title 42 of the Code of Federal Regulations Part 435 Subparts H and I, and to limit the amount of time institutions have to report these expenses to three months after they occurred. This proposed rule will impact beneficiaries if some medical and remedial care expenses are not reported in a timely manner and are not deducted from the patient's liability calculation. Providers will also be impacted since they will now have a three-month time limit for reporting expenses to Medicaid. Implementation of this proposed rule will have no fiscal impact to providers or small businesses, but the timely deduction of incurred medical expenses may result in an indeterminable savings to the Medicaid program for FY 23-24, FY 24-25, and FY 25-26.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

*Kimberly Sullivan*

Signature of Head or Designee

Kimberly Sullivan, JD  
Interim Medicaid Executive Director

Typed Name & Title of Agency Head or Designee

10/10/2023

Date of Signature

*Patrice Thomas, Deputy Fiscal Officer*

Legislative Fiscal Officer or Designee

10/10/2023

Date of Signature