

NOTICE OF INTENT

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

**Pharmacy Benefits Management Program
Copayment and Maximum Quantity
(LAC 50:XXIX.111 and 119)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.111 and §119 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.

Act 708 of the 2022 Regular Session of the Louisiana Legislature directed that the Department of Health require all Medicaid health plans to include the dispensing of a six-month supply of contraceptive drugs to be obtained at one time by the member, unless the member or the prescribing provider requests a smaller supply. In compliance with Act 708, the Department of Health, Bureau of Health Service Financing proposes to amend the provisions governing the Pharmacy Benefits Management Program in order to allow for a six-month supply of contraceptives. In addition, this proposed Rule allows a ninety-day supply of maintenance medications, and exempts pharmacy services provided during a federal public health emergency (PHE) from copayment requirements.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXIX. Pharmacy

Chapter 1 General Provisions

§111. Copayment

A. - A.1. ...

2. The pharmacy provider shall collect a copayment from the Medicaid beneficiary for each drug dispensed and covered by Medicaid. The following pharmacy services are exempt from the copayment requirements:

a. - b. ...

c. family planning services;

d. preventive medications as designated by the U.S. Preventive Services Task Force's A and B recommendations; and

e. services provided during a federal public health emergency (PHE).

A.3. - B.5. ...

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, Office of the Secretary, LR 32:1055 (June 2006), amended by the Department of Health, Bureau of Health Services

Financing, LR 43:1181 (June 2017), LR 43:1553 (August 2017), LR 46:34 (January 2020), LR 48:

§119. Maximum Quantity

A. ...

B. When maintenance drugs are prescribed and dispensed for chronic illnesses they shall be in quantities sufficient to effect economy in dispensing and yet be medically sound. Maintenance type drugs should be prescribed and dispensed in at least a month's supply after the initial fill. A 90-day supply is allowed on maintenance drugs after a beneficiary has been on the same drug and strength for 60 days. Contraceptives should be dispensed in a six-month supply, after a beneficiary has been on the same drug and strength for six months, unless the beneficiary or prescriber requests a smaller supply.

C. For patients in nursing homes, the pharmacist shall bill for a minimum of a month's supply of medication unless the treating physician specifies a smaller quantity for a special medical reason. A 90-day supply is allowed on maintenance drugs after a beneficiary has been on the same drug and strength for 60 days.

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, Office of the Secretary, Bureau of Health

Services Financing, LR 32:1056 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1182 (June 2017), LR 46:34 (January 2020), LR 48:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring that beneficiaries have access to sufficient quantities of prescription medications.

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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by removing the copayment

requirement for pharmacy services during a federal public health emergency.

Small Business Statement

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 may have an adverse impact on small businesses, as described in the Act, if these legislatively required changes increase the financial burden on providers. With the resources available to the department, a regulatory flexibility analysis has been prepared in order to consider methods to minimize the potential adverse impact on small businesses. The department has determined that there is no less intrusive or less costly alternative methods of achieving the intended purpose since the changes result from legislative mandates.

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 staffing level requirements or qualifications required to provide the same level of service, but may increase direct or indirect costs to the provider and may have a negative impact on the provider's ability to provide the same level of service as

described in HCR 170 if additional inventory cost, inventory tax, and decreased reimbursement as a result of reduced dispensing fees adversely impacts the provider's financial standing.

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 October 31, 2022.

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 October 10, 2022. 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 October 27, 2022 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 October 10, 2022. 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. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

Secretary

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

Person
Preparing
Statement: Veronica Dent Dept.: Health

Phone: 342-3228 Office: Bureau of Health Services Financing

Return
Address: P.O. Box 91030 Rule
Title: Pharmacy Benefits

Baton Rouge, LA Management Program

Copayment and Maximum Quantity

Date Rule
Takes Effect: December 20, 2022

SUMMARY
(Use complete sentences)

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 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 result in estimated SGF programmatic savings of approximately \$49,326 for FY 22-23, \$105,827 for FY 23-24, and \$105,827 for FY 24-25. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 22-23 for the state's administrative expense for promulgation of this proposed and final rule.

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

It is anticipated that implementation of this proposed rule will reduce federal revenue collections by approximately \$110,358 for FY 22-23, \$215,053 for FY 23-24, and \$215,053 for FY 24-25. It is anticipated that \$378 will be collected for the federal share of the expense for promulgation of the proposed and final rule.

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

In compliance with Act 708 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule amends the provisions governing the Pharmacy Benefits Management Program in order to allow for a six-month supply of contraceptives. In addition, it allows a 90-day supply of maintenance medications, and exempts pharmacy services provided during a federal public health emergency (PHE) from copayment requirements. This proposed rule will ensure that beneficiaries have sufficient quantities of prescription medications and eliminate copayments during a federal PHE. Providers of pharmacy services may be adversely impacted if the proposed rule results in additional inventory cost, inventory tax, and decreased reimbursement due to decreased dispensing fees. Implementation of this proposed rule is anticipated to reduce expenditures in the Medicaid Program by approximately \$160,440 for FY 22-23, \$320,880 for FY 23-24, and \$320,880 FY 24-25.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Agency Head or Designee

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

September 6, 2022
Date of Signature



Legislative Fiscal Officer or Designee


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).

In compliance with Act 708 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule amends the provisions governing the Pharmacy Benefits Management Program in order to allow for a six-month supply of contraceptives. In addition, it allows 90-day supply of maintenance medications, and exempts pharmacy services provided during a federal public health emergency (PHE) from copayment requirements.

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

Act 708 of the 2022 Regular Session of the Louisiana Legislature directed that the Department of Health require all Medicaid health plans to include the dispensing of a six-month supply of contraceptive drugs to be obtained at one time by the member, unless the member or the prescribing provider requests a smaller supply. In compliance with Act 708, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the Pharmacy Benefits Management Program in order to allow for a six-month supply of contraceptives. In addition, this proposed rule allows a 90-day supply of maintenance medications, and exempts pharmacy services provided during a federal public health emergency from copayment requirements.

- 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 result in a reduction in expenditures in the Medicaid Program of approximately \$159,684 for FY 22-23, \$320,880 for FY 23-24, and \$320,880 for FY 24-25. In FY 22-23 \$756 is included for the state's administrative expense for promulgation of this proposed and 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 23	FY 24	FY 25
Personal Services			
Operating Expenses	\$756	\$0	\$0
Professional Services			
Other Charges	(\$160,440)	(\$320,880)	(\$320,880)
Equipment			
Major Repairs & Constr.			
TOTAL	(\$159,684)	(\$320,880)	(\$320,880)
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.

The expenses reflected above are the estimated programmatic savings in the Medicaid program. In FY 22-23, \$756 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 23	FY 24	FY 25
State General Fund	(\$49,326)	(\$105,827)	(\$105,827)
Agency Self-Generated			
Dedicated			
Federal Funds	(\$110,358)	(\$215,053)	(\$215,053)
Other (Specify)			
TOTAL	(\$159,684)	(\$320,880)	(\$320,880)

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 23	FY 24	FY 25
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	(\$110,358)	(\$215,053)	(\$215,053)
Local Funds			
TOTAL	(\$110,358)	(\$215,053)	(\$215,053)

*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.

The amounts reflected above are the estimated decrease in the federal share of programmatic expenditures for the Medicaid program. In FY 22-23, \$378 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the 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.

In compliance with Act 708 of the 2022 Regular Session of the Louisiana Legislature, this proposed rule amends the provisions governing the Pharmacy Benefits Management Program in order to allow for a six-month supply of contraceptives. In addition, it allows a 90-day supply of maintenance medications, and exempts pharmacy services provided during a federal public health emergency (PHE) from copayment requirements. This proposed rule will ensure that beneficiaries have sufficient quantities of prescription medications and eliminate copayment during a federal PHE.

- 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.

Providers of pharmacy services may be adversely impacted if the proposed rule results in additional inventory cost, inventory tax, and decreased reimbursement due to decreased dispensing fees. Implementation of this proposed rule is anticipated to reduce expenditures in the Medicaid Program by approximately \$160,440 for FY 22-23, \$320,880 for 23-24, and \$320,880 FY 24-25.

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.