



State of Louisiana

Louisiana Department of Health
Office of the Secretary

To: The Honorable John Bell Edwards, Governor, State of Louisiana (Via Hand Delivery)
The Honorable Jeff Landry, Attorney General, Louisiana Department of Justice (Via Hand Delivery)
The Honorable John A. Alario, Jr., President, Louisiana Senate (apa.senatepresident@legis.la.gov)
The Honorable Taylor F. Barras, Speaker, Louisiana House of Representatives (apa.housespeaker@legis.la.gov)
Catherine Brindley, Editor, *Louisiana Register* (reg.submission@la.gov)
Senate Health and Welfare Committee (apa.s-h&w@legis.la.gov)
House Health and Welfare Committee (apa.h-hw@legis.la.gov)

By Candy Reeves for -

From: Rebekah E. Gee MD, MPH, Secretary, Louisiana Department of Health

Date: November 8, 2019

Re: Justification of Promulgation of Emergency Rule
LAC 50:XXIX.111 – Copayment

MEMORANDUM

The Louisiana Administrative Procedure Act (APA) provides a mechanism for a state agency to adopt an emergency rule “without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable.” In order to invoke the emergency process, at least one of four conditions must be present:

- 1) The agency finds that imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than provided in the regular APA procedure;
- 2) The agency must enact regulations upon shorter notice than provided in the regular APA procedure in order to avoid sanctions or penalties from the United States;

- 3) The agency must enact regulations upon shorter notice than provided in the regular APA procedure in order to avoid a budget deficit in the case of medical assistance programs; or
- 4) The agency must enact regulations upon shorter notice than provided in the regular APA procedure in order to secure new or enhanced federal funding in medical assistance programs.

The Louisiana Department of Health (LDH) now finds it necessary to promulgate an emergency rule in order to comply with the directives of the Centers for Medicare and Medicaid Services (CMS) regarding the assessment of cost sharing for prescription drugs, thus avoiding the assessment of penalties or sanctions to the Louisiana medical assistance program (Medicaid). This emergency rule is being promulgated in order to continue the provisions of the July 31, 2019 Emergency Rule.

Attachments: Emergency Rule – LAC 50:XXIX.111

Cc: Sue Fontenot, Pharmacist 4, Bureau of Health Services Financing
Anita Dupuy, Legislative Liaison, Louisiana Department of Health
Catherine Brindley, *Louisiana Register* Editor, Office of State Register

DECLARATION OF EMERGENCY

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

**Pharmacy Benefits Management Program
Pharmacy Copayment
(LAC 50:XXIX.111)**

The Department of Health, Bureau of Health Services Financing amends LAC 50:XXIX.111 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health, Bureau of Health Services Financing received approval from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) of a State Plan Amendment (SPA) relative to assessing drug copays to managed care enrollees and compliance with federal cost sharing rules. The department promulgated an Emergency Rule which amended the provisions governing copayment in the Pharmacy Benefits Management Program in order to add a copay tier to allow individuals with a household income of less than or equal to \$800 per month to be charged \$0 drug copays from April 1, 2019-December 31, 2019 to align with the corresponding CMS-approved SPA in compliance with federal regulations and CMS

requirements (*Louisiana Register*, Volume 45, Number 4).

This Emergency Rule is being promulgated in order to continue the provisions of the April 1, 2019 Emergency Rule. This action is being taken in order to avoid federal sanctions.

Effective November 29, 2019, the Department of Health, Bureau of Health Services Financing amends the provisions governing copayment in the Pharmacy Benefits Management Program.

Title 50

**PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXIX. Pharmacy**

Chapter 1. General Provisions

§111. Copayment

A. - A.1. ...

a. For dates of service April 1, 2019 through December 31, 2019, recipients with a household income of less than or equal to \$800 per month will not be subject to copay.

A.2. - C.4. ...

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 45:

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

By Cindy Riva for

Rebekah E. Gee MD, MPH

Secretary

11/2/2019