

2018 First Extraordinary Session

HOUSE BILL NO. 2

BY REPRESENTATIVES BACALA, AMEDEE, BERTHELOT, TERRY BROWN, STEVE CARTER, CONNICK, CREWS, DEVILLIER, EDMONDS, EMERSON, FALCONER, FOIL, GAROFALO, GUINN, LANCE HARRIS, HAVARD, HENRY, HENSGENS, HODGES, HOFFMANN, HORTON, HOWARD, NANCY LANDRY, MCFARLAND, MIGUEZ, JAY MORRIS, JIM MORRIS, PEARSON, SCHEXNAYDER, SEABAUGH, STOKES, TALBOT, THOMAS, AND WRIGHT

MEDICAID: Provides for Medicaid eligibility determination functions and Medicaid fraud detection and prevention (Items #14 and 15)

1 AN ACT

2 To enact R.S. 24:513(P), R.S. 36:254(A)(6)(c) and (d), Subpart D-2 of Part VI-A of Chapter
3 3 of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.
4 46:440.9.1 through 440.9.4, and R.S. 47:1508(B)(42) and (D), relative to Medicaid
5 program integrity; to provide relative to the eligibility determination functions of the
6 Louisiana Medicaid program; to provide for duties of the secretary of the Louisiana
7 Department of Health in administering the Medicaid program; to authorize the
8 Louisiana Department of Revenue to share state income tax return data with the
9 Louisiana Department of Health and the legislative auditor for certain limited
10 purposes; to require the Louisiana Department of Health to utilize such data in the
11 Medicaid eligibility determination process; to authorize the legislative auditor to
12 utilize such data for purposes of Medicaid fraud detection and prevention; to provide
13 for interagency agreements relative to sharing of data; to provide for implementation
14 of certain functions prescribed by the Medical Assistance Programs Integrity Law;
15 and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 24:513(P) is hereby enacted to read as follows:

1 §513. Powers and duties of legislative auditor; audit reports as public records;
2 assistance and opinions of attorney general; frequency of audits; subpoena
3 power

4 * * *

5 P. The legislative auditor may access individual-level state income tax return
6 data in accordance with R.S. 47:1508(B)(42) for the limited purposes of ensuring
7 accuracy of Medicaid eligibility determinations, detecting and preventing fraud in
8 the Medicaid program, and fulfilling all other applicable requirements of the Medical
9 Assistance Programs Integrity Law, R.S. 46:437.1 et seq.

10 Section 2. R.S. 36:254(A)(6)(c) and (d) are hereby enacted to read as follows:

11 §254. Powers and duties of the secretary of the Louisiana Department of Health

12 A. In addition to the functions, powers, and duties otherwise vested in the
13 secretary by law, he shall:

14 * * *

15 (6)

16 * * *

17 (c) Take such actions as are necessary to ensure accuracy in medical
18 assistance program eligibility determinations.

19 (d) Work cooperatively with other departments and officials of the state,
20 including but not limited to the attorney general, the legislative auditor, and the
21 Louisiana Department of Revenue, in detecting and preventing fraud in the medical
22 assistance program and fulfilling all other applicable requirements of the Medical
23 Assistance Programs Integrity Law, R.S. 46:437.1 et seq.

24 * * *

25 Section 3. Subpart D-2 of Part VI-A of Chapter 3 of Title 46 of the Louisiana
26 Revised Statutes of 1950, comprised of R.S. 46:440.9.1 through 440.9.4, is hereby enacted
27 to read as follows:

1 SUBPART D-2. MEDICAID PROGRAM INTEGRITY2 IN ELIGIBILITY DETERMINATIONS3 §440.9.1. Legislative findings; intent4 A. The legislature hereby finds and affirms all of the following:

5 (1) Fraud, waste, and abuse in the Louisiana Medicaid program divert public
6 resources that could otherwise be used for legitimate health services for those with
7 the greatest needs in our state.

8 (2) The United States Government Accountability Office estimates that in
9 federal fiscal year 2016, the proportion of federal Medicaid spending comprised of
10 improper payments was approximately ten and one-half percent, equating to thirty-
11 six billion taxpayer dollars lost to Medicaid fraud, waste, abuse, and other improper
12 expenditures.

13 (3) An October, 2017, analysis by the Louisiana Department of Revenue
14 which examined 2016 Louisiana income tax return data for the entire population of
15 adult Medicaid recipients, comprised of approximately eight hundred sixty thousand
16 individuals, found all of the following:

17 (a) That the self-attested income shown on the Medicaid applications of
18 approximately twenty-five percent of adult Medicaid enrollees differed by at least
19 twenty thousand dollars from the income shown on their state income tax returns.

20 (b) That the self-attested household size shown on the Medicaid applications
21 of more than half of adult Medicaid enrollees did not match the number of
22 exemptions shown on their state income tax returns.

23 (4)(a) The January, 2018, report of the Louisiana task force on coordination
24 of Medicaid fraud detection and prevention initiatives issued in accordance with R.S.
25 46:440.4 et seq. identifies all of the following as high-priority needs in this state:

26 (i) The need to strengthen Medicaid eligibility determination processes.

27 (ii) The need to better coordinate interagency efforts to prevent fraud, waste,
28 and abuse in the Medicaid program.

1 (iii) The need to strengthen oversight and tighten controls in the Medicaid
2 managed care program.

3 (b) The January, 2018, report of the Louisiana task force on coordination of
4 Medicaid fraud detection and prevention initiatives sets forth all of the following
5 recommendations:

6 (i) The Louisiana Department of Revenue and the Louisiana Department of
7 Health should improve their cooperation, coordination, and data sharing agreements
8 for the purpose of providing the Louisiana Department of Health with additional
9 tools to properly determine the eligibility of persons for Medicaid benefits.

10 (ii) The Louisiana Department of Health should develop a standardized
11 process for reporting the results of its eligibility fraud reviews to both the attorney
12 general and the legislative auditor for the purpose of allowing those agencies an
13 opportunity to further pursue potential fraud cases as authorized or required by law.

14 (iii) The Louisiana Department of Health should continue to work with the
15 Healthcare Fraud Prevention Partnership of the Centers for Medicare and Medicaid
16 Services to share data in order to take advantage of resources available through the
17 partnership such as results of studies that identify potentially fraudulent activity.
18 Further, the department should cause the Medicaid managed care organizations with
19 which it contracts to participate in the Healthcare Fraud Prevention Partnership, as
20 combining data maintained by the department and the managed care organizations
21 with data of other partnership members will contribute to a comprehensive fraud,
22 waste, and abuse detection and prevention system.

23 B. The intent of this Subpart is to enhance the overall integrity of the
24 Louisiana Medicaid program through necessary reforms to the program's eligibility
25 determination functions.

26 §440.9.2. Medicaid eligibility determinations; utilization of state income tax data

27 A. The Louisiana Department of Health shall utilize state income tax return
28 data in the process of determining all of the following:

29 (1) A Medicaid applicant's initial eligibility for Medicaid benefits.

1 (2) A Medicaid enrollee's continued eligibility for Medicaid benefits at the
2 time of his eligibility redetermination.

3 B. The Louisiana Department of Health shall utilize state income tax return
4 data including but not limited to income and dependent information in its Medicaid
5 eligibility determination process.

6 §440.9.3. Data sharing agreement with the Louisiana Department of Revenue

7 The secretary of the Louisiana Department of Health shall enter into any
8 memorandum of understanding, cooperative endeavor, or other type of agreement
9 as may be necessary to facilitate mutual sharing of data with the Louisiana
10 Department of Revenue for the purposes set forth in this Subpart.

11 §440.9.4. Reasonable compatibility; limitation

12 A. For purposes of this Section, "reasonable compatibility" refers to the
13 result of a reconciliation of discrepancies between a Medicaid applicant's
14 self-attestation about his financial information and the information reported by the
15 electronic data sources which a state Medicaid agency utilizes in its eligibility
16 determination process.

17 B. With respect to the income verification function of the Medicaid
18 eligibility determination process, the Louisiana Department of Health shall ensure
19 that the electronically reported income of any applicant or enrollee approved for
20 initial or continuing Medicaid eligibility does not exceed his self-attested income by
21 more than ten percent.

22 C. The secretary of the Louisiana Department of Health shall take all such
23 actions as are necessary, including but not limited to submission of Medicaid state
24 plan amendments and promulgation of administrative rules, to ensure that the
25 reasonable compatibility standard provided for in this Section is implemented.

26 Section 4. R.S. 47:1508(B)(42) and (D) are hereby enacted to read as follows:

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 2 Reengrossed

2018 First Extraordinary Session

Bacala

Abstract: Provides for program integrity in Medicaid eligibility determination functions, Medicaid fraud detection and prevention, and interagency data sharing in furtherance of those purposes.

Proposed law presents legislative findings relative to fraud, waste, and abuse in the Medicaid program, and concerning recommendations of the La. task force on coordination of Medicaid fraud detection and prevention initiatives.

Proposed law provides that its purpose is to enhance the overall integrity of the La. Medicaid program through necessary reforms to the program's eligibility determination functions.

Proposed law requires the La. Department of Health (LDH) to utilize state income tax return data in the process of determining all of the following:

- (1) A Medicaid applicant's initial eligibility for Medicaid benefits.
- (2) A Medicaid enrollee's continued eligibility for Medicaid benefits at the time of his eligibility redetermination.

Proposed law requires that LDH utilize state income tax return data including but not limited to income and dependent information in its Medicaid eligibility determination process.

Proposed law requires the secretary of LDH to enter into any memorandum of understanding, cooperative endeavor, or other type of agreement as may be necessary to facilitate mutual sharing of data with the La. Department of Revenue for the purposes set forth in proposed law.

With respect to the income verification function of the Medicaid eligibility determination process, proposed law requires LDH to ensure that the electronically reported income of any applicant or enrollee approved for initial or continuing Medicaid eligibility does not exceed his self-attested income by more than 10%.

Present law, R.S. 47:1508(A), provides that the records and files of the secretary of the La. Department of Revenue are confidential and privileged, and that no person shall divulge or disclose any information obtained from such records and files except as authorized by present law.

Proposed law authorizes the secretary of the La. Department of Revenue to disclose individual-level state income tax return data to the legislative auditor or the secretary of LDH for the following purposes exclusively:

- (1) Ensuring accuracy of Medicaid eligibility determinations.
- (2) Detecting and preventing fraud in the Medicaid program.
- (3) Fulfilling the requirements of present law relative to Medicaid program integrity, R.S. 46:437.1 et seq.

Proposed law authorizes the secretary of the La. Department of Revenue to enter into any memorandum of understanding, cooperative endeavor, or other type of agreement as may be necessary to facilitate sharing of data with the legislative auditor and the secretary of LDH, respectively, for the purposes set forth in proposed law.

Proposed law requires that when the legislative auditor examines the records and files of the La. Department of Revenue for the purposes of ensuring the accuracy of Medicaid eligibility determinations, exemptions, credits, and rebates, the secretary shall assist the legislative auditor by providing supporting documentation from the taxpayer.

Present law, R.S. 24:513, provides for the powers and duties of the legislative auditor.

Proposed law retains present law and adds thereto an authorization for the legislative auditor to access individual-level state income tax return data, in accordance with proposed law, for the following purposes:

- (1) Ensuring accuracy of Medicaid eligibility determinations.
- (2) Detecting and preventing fraud in the Medicaid program.
- (3) Fulfilling all other applicable requirements of present law relative to Medicaid program integrity, R.S. 46:437.1 et seq.

Present law, R.S. 36:254, provides for the powers and duties of the secretary of LDH.

Proposed law retains present law and adds thereto the following duties:

- (1) To take such actions as are necessary to ensure accuracy in Medicaid eligibility determinations.
- (2) To work cooperatively with other state departments and officials, including but not limited to the attorney general, the legislative auditor, and the La. Department of Revenue, in detecting and preventing Medicaid fraud and fulfilling all other applicable requirements of present law relative to Medicaid program integrity, R.S. 46:437.1 et seq.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 24:513(P), R.S. 36:254(A)(6)(c) and (d), R.S. 46:440.9.1-440.9.4, and R.S. 47:1508(B)(42) and (D))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Requires that when the legislative auditor examines the records and files of the secretary of the Dept. of Revenue for the purposes of ensuring the accuracy of Medicaid eligibility determinations, exemptions, credits, and rebates, the secretary shall assist the legislative auditor by providing supporting documentation from the taxpayer.

The House Floor Amendments to the engrossed bill:

1. Correct the order in which the terms "electronically reported" and "self-attested" appear in proposed law relative to income verification.
2. Make technical changes.