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## DIGEST

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HB 11 Original

2018 First Extraordinary Session

McFarland

**Abstract:** Requires copayments in the La. Medicaid program for nonemergency use of hospital emergency departments and for nonpreferred prescription drugs.

### General Provisions

Proposed law establishes definitions and legislative findings relative to the medical assistance program of this state commonly known as Medicaid.

Proposed law requires the secretary of the La. Department of Health (LDH) to take such actions as are necessary to cause monies realized as cost savings or cost avoidance resulting from the following functions to be reinvested in the Medicaid program:

- (1) The efficiencies provided for in proposed law.
- (2) Savings achieved through administrative efficiencies in the Medicaid managed care program.
- (3) Amounts that managed care organizations rebate to LDH for not meeting the required medical loss ratio specified in contracts with the department.

Proposed law requires the secretary of LDH to prioritize reinvestment of such monies for the following purposes:

- (1) Enhancing primary care provider rates.
- (2) Enhancing access to primary care services.
- (3) Instituting and supporting evidence-based programs and services which encourage Medicaid enrollees to access health services in the most cost-efficient medically appropriate settings.

Proposed law requires the secretary of LDH to promulgate all administrative rules as are necessary to implement the provisions of proposed law.

### Medicaid Recipient Copayments For Nonemergency Services Delivered In Hospital Emergency Departments

Proposed law provides the following definitions for purposes of proposed law relative to Medicaid recipient copayments for nonemergency services delivered in hospital emergency departments:

- (1) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in any of the following:
  - (a) Placing the health of the individual or, for a pregnant woman, the health of the woman or her unborn child in serious jeopardy.
  - (b) Serious impairment to bodily functions.
  - (c) Serious dysfunction of any bodily organ or part.
- (2) "Emergency services" means inpatient and outpatient services that meet all of the following criteria:
  - (a) Are furnished by a provider who is qualified to furnish such services under present law.
  - (b) Are needed to evaluate or stabilize an emergency medical condition as defined in proposed law.
- (3) "Nonemergency services" means any care or services that are not considered emergency services as defined in proposed law. However, proposed law provides that "nonemergency services" shall not include any services furnished in a hospital emergency department that are required to be provided as an appropriate medical screening examination or stabilizing examination and treatment under the federal Emergency Treatment and Active Labor Act.

Proposed law requires LDH to establish a copayment requirement in the La. Medicaid program for nonemergency services provided by a hospital emergency department, subject to the requirements and limitations of federal Medicaid regulations.

Proposed law provides that the copayment shall be assessed to all individuals upon whom cost sharing may be imposed for nonemergency services provided by a hospital emergency department under federal Medicaid regulations.

Proposed law stipulates that the copayment shall not be assessed to any individual who is under the age of 18, is pregnant, has a disability, or meets any other exemption provided in the applicable federal Medicaid regulation, 42 CFR 447.56.

Proposed law stipulates that the copayment shall be assessed only to Medicaid enrollees with income in excess of 100% of the federal poverty level.

Proposed law authorizes denial of service for nonpayment of the required copayment, subject to federal limitations.

Proposed law provides that the amount of the copayment shall not exceed the maximum amount permitted by federal Medicaid cost sharing regulations (\$8 per nonemergency visit for Medicaid enrollees whose income is below 150% of the federal poverty level; no per-visit limit for other nonexempt Medicaid enrollees, subject to an annual maximum).

Proposed law requires LDH, either directly or through the Medicaid managed care organizations (MCOs) with which it contracts, to do all of the following:

- (1) Provide notice to each Medicaid recipient who is subject to proposed law, at the time of enrollment and on a biannual basis, that hospitals will collect a copayment when the recipient receives nonemergency services at a hospital emergency department. Proposed law requires that the notice be designed to educate Medicaid recipients about alternative healthcare settings for primary and urgent care services.
- (2) Develop the standard definition of nonemergency services, consistent with the provisions of proposed law, along with a list of diagnosis codes that are considered nonemergent in order to assist hospital emergency department personnel in the assessment of the copayment required by proposed law.
- (3) Make the standard definition of nonemergency services and list of diagnosis codes available to hospitals electronically through its website, and through the website of each MCO.
- (4) Make available to Medicaid providers electronically, and on a real-time basis, all of the following information:
  - (a) Whether a Medicaid recipient is subject to the copayment requirement provided for in proposed law.
  - (b) The name and contact information of the Medicaid recipient's primary care provider.
  - (c) A list of alternate sources of care available in the applicable geographic area which can provide services in a timely manner with the imposition of a lesser cost sharing amount or no cost sharing.

Proposed law provides that if LDH or the MCO fails to provide to a hospital the information required by proposed law, then the hospital shall not be required to charge the Medicaid recipient any copayment for nonemergency services, and LDH and the MCO shall be prohibited from reducing Medicaid reimbursement to the hospital by the amount of the copayment for the encounter.

Proposed law provides that in any instance in which an MCO reduces reimbursement to a provider by the amount of a copayment to which a Medicaid recipient was not rightfully subject pursuant to proposed law, LDH shall assess a penalty on that MCO not exceeding \$2,500 per occurrence.

Proposed law prohibits MCOs from expanding the standard definition of nonemergency services or the list of nonemergent diagnosis codes provided for in proposed law. Requires that LDH and the MCOs use this standard definition and list of diagnosis codes exclusively for purposes of complying with proposed law, and prohibits their use for any purpose not specified in proposed law.

Proposed law requires that LDH, on or before March 1, 2019, and semiannually thereafter, submit a report to the House Committee on Appropriations, the Senate Committee on Finance, and the legislative committees on health and welfare encompassing all of the following information:

- (1) The total number of emergency department visits per thousand-member months for each managed care organization and for the fee-for-service component of the Medicaid program.
- (2) The total number of emergency department visits subject to the imposition of a copayment per thousand-member months for each managed care organization.
- (3) Any other information concerning the copayment requirement for nonemergency services provided by a hospital emergency department that the secretary deems necessary or appropriate.

Proposed law stipulates that nothing therein shall be construed to limit a hospital's obligations for screening and stabilizing treatment of an emergency medical condition under the federal Emergency Treatment and Active Labor Act; or to modify any obligation relating to the application of a prudent layperson standard for payment or coverage of emergency medical services by any MCO.

Proposed law requires the secretary of LDH to take such actions as are necessary to fully implement and effectuate the Medicaid copayment for nonemergency use of a hospital emergency department, as provided in proposed law, on or before Jan. 1, 2019.

Proposed law terminates on Jan. 1, 2021.

### **Medicaid Recipient Copayments For Nonpreferred Drugs**

Proposed law requires LDH to differentiate between preferred and nonpreferred drugs and to institute a copayment requirement in the Medicaid program for all nonpreferred drugs, subject to the requirements and limitations of federal Medicaid regulations.

Proposed law provides that the copayment shall be assessed to all individuals upon whom cost sharing for such drugs may be imposed under federal Medicaid regulations.

Proposed law provides that the amount of the copayment for nonpreferred drugs shall not exceed the maximum amounts permitted by federal Medicaid regulations.

Proposed law requires LDH to authorize a pharmacy to require an individual to pay the copayment for a nonpreferred drug as a condition for receiving the drug if all of the following conditions are met:

- (1) The individual has family income above 100% of the federal poverty level.
- (2) The individual is not part of an exempted group under 42 CFR 447.56.

Proposed law requires the secretary of LDH to take such actions as are necessary to fully implement and effectuate the Medicaid copayment for nonpreferred drugs, as provided in proposed law, on or before Jan. 1, 2019.

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

(Adds R.S. 46:460.53 and 460.101-460.123)