

BY REPRESENTATIVE EDWARDS

1 A CONCURRENT RESOLUTION

2 To amend the Department of Health and Hospitals rule (LAC 50:III.501) which provides

3 relative to medical assistance program (Medicaid) eligibility and to direct the Office

4 of the State Register to print the amendments in the Louisiana Administrative Code.

5 WHEREAS, the legislation referred to collectively as the "Affordable Care Act" or

6 "ACA" consists of the following Acts of Congress:

7 (1) The Patient Protection and Affordable Care Act (PPACA), which originated as

8 H.R. 3590 in the One Hundred Eleventh United States Congress and became Public Law No.

9 111-148.

10 (2) The Health Care and Education Reconciliation Act (HCERA), which originated

11 as H.R. 4872 in the One Hundred Eleventh United States Congress and became Public Law

12 No. 111-152; and

13 WHEREAS, key features of the ACA are rights and protections for health care

14 consumers, accountability measures for insurance companies, expanded eligibility for the

15 Medicaid program, and a requirement that every American maintain a minimum level of

16 health insurance coverage; and

17 WHEREAS, though the ACA provides for expanded Medicaid eligibility in all states,

18 participation in the expansion became optional for each state as a result of the 2012 United

19 States Supreme Court decision upholding the constitutionality of the ACA; and

1 WHEREAS, the federal government has demonstrated flexibility in administering  
2 the expansion of Medicaid eligibility by approving applications submitted by states to  
3 implement the expansion through programs that provide premium assistance to persons who  
4 purchase private insurance through health insurance exchanges; and

5 WHEREAS, in order to be eligible for Medicaid benefits in Louisiana presently,  
6 working parents of dependent children must have household income at or below twenty-four  
7 percent of the federal poverty level; and

8 WHEREAS, in dollar terms, this threshold is five thousand six hundred fifty-two  
9 dollars in annual income for a family of four; and

10 WHEREAS, the level of Louisiana's income threshold for working parents to become  
11 Medicaid-eligible is the third-lowest in the nation and is less than half of the national median  
12 of fifty-eight percent of the federal poverty level (thirteen thousand six hundred fifty-nine  
13 dollars in annual income for a family of four) for this group; and

14 WHEREAS, the working poor of this state would benefit greatly from the expansion  
15 of Medicaid income eligibility set forth by the ACA to, effectively, one hundred thirty-eight  
16 percent of the federal poverty level (one hundred thirty-three percent plus a five percent  
17 income disregard as provided in law), equaling thirty-two thousand four hundred ninety-nine  
18 dollars in annual income for a family of four presently; and

19 WHEREAS, correspondingly, the working poor will be penalized to the greatest  
20 extent by the provisions of the ACA if this state refuses to participate in the Medicaid  
21 expansion and those families fail to maintain health coverage as required by law; and

22 WHEREAS, approximately two hundred fifty thousand Louisiana adults who  
23 currently lack health insurance would become eligible for Medicaid coverage through the  
24 expansion; and

25 WHEREAS, in states such as Louisiana that have refused the expansion to date,  
26 working people with incomes above the Medicaid eligibility limit but below the poverty line  
27 have neither Medicaid nor the opportunity to obtain subsidized coverage through the health  
28 insurance marketplace created by the ACA, as the law provides subsidies for persons with

1 household income at or above one hundred percent of the federal poverty level to buy private  
2 insurance; and

3 WHEREAS, the ACA provides that Medicaid benefits for households who become  
4 eligible due to the expansion will be financed entirely with federal funds for the first three  
5 years of the expansion (2014 through 2016), and that the federal share of funding for benefits  
6 to these newly eligible enrollees will phase down from one hundred percent to ninety percent  
7 between 2017 and 2020, with the federal share remaining at ninety percent in ensuing years;  
8 and

9 WHEREAS, in the most reliable nonpartisan fiscal analysis conducted on Medicaid  
10 expansion proposals before the legislature in 2013, the Legislative Fiscal Office estimated  
11 that had Louisiana implemented the expansion beginning January 1, 2014, the State General  
12 Fund savings to result from the expansion would have been one hundred six million to one  
13 hundred eleven million dollars per year from 2014 through 2018, totaling five hundred  
14 thirty-two million to five hundred fifty-four million dollars in savings for the period, due to  
15 the sizeable federal expenditures that would have been committed to the state's program; and

16 WHEREAS, despite providing an enhanced level of funding to states that expand  
17 Medicaid, the ACA overall is projected to have a positive budgetary impact at the federal  
18 level as evidenced in an analysis conducted by the nonpartisan Congressional Budget Office  
19 which found that full implementation of the ACA would result in a net reduction in federal  
20 budget deficits of two hundred ten billion dollars over the ten-year period of 2012 through  
21 2021; and

22 WHEREAS, health care for Louisiana workers who do not qualify for Medicaid,  
23 whose jobs do not provide health benefits, and who cannot afford private health insurance  
24 has traditionally been financed by the Medicaid and Medicare Disproportionate Share  
25 Hospital (DSH) programs, which currently provide major support to providers that furnish  
26 care to low-income uninsured persons; and

27 WHEREAS, the ACA provides for a steep reduction in DSH funding concurrent with  
28 increased Medicaid expenditures as uninsured Americans gain either private health insurance  
29 or coverage through the intended expansion of Medicaid; and

1 WHEREAS, along with DSH payments, a Medicaid funding stream designated as  
2 uncompensated care cost (UCC) financing was historically used to support the network of  
3 state hospitals known as the "charity system", forming the greater part of what health finance  
4 experts have called the "patchwork quilt" of funding for that system; and

5 WHEREAS, though Louisiana abruptly privatized nearly all of its state hospitals in  
6 2013, the same patchwork of DSH and UCC funding that proponents of privatization  
7 criticized as unsustainable is now supporting the public-private partnerships that operate  
8 state hospitals exactly as it did when the hospitals were known as the "charity system"; and

9 WHEREAS, due to the dramatic reductions to DSH and UCC funding provided in  
10 the ACA, the unreliability of these forms of health services financing is now certain; and

11 WHEREAS, by refusing to participate in the Medicaid expansion while faced with  
12 dramatically reduced DSH and UCC funding, this state risks creating an untenable situation  
13 for working poor families and for all hospitals of the state, whether wholly private or  
14 operated through a public-private partnership, as the federal Emergency Medical Treatment  
15 and Active Labor Act (EMTALA) requires hospitals to provide care to anyone needing  
16 emergency treatment regardless of their ability to pay, and this law includes no provisions  
17 for reimbursing hospitals for such care; and

18 WHEREAS, penalties provided in the ACA of up to three thousand dollars per  
19 employee on private businesses with fifty or more employees that do not offer employee  
20 health insurance are set to take effect in 2015, but the ACA specifically exempts businesses  
21 from this penalty if their employees qualify for Medicaid coverage; and

22 WHEREAS, an analysis by the tax accounting firm Jackson Hewitt concluded that  
23 absent this state's participation in the Medicaid expansion, the employer penalty for failure  
24 to ensure some form of employee health coverage as required by the ACA would cost  
25 Louisiana businesses, collectively, between fifty-one million and seventy-seven million  
26 dollars annually; and

27 WHEREAS, these costs to private enterprises, which are entirely avoidable if  
28 Louisiana participates in the Medicaid expansion, would significantly impede job creation  
29 and economic growth in this state; and

1 WHEREAS, it is unreasonable to assume that health care providers currently serving  
2 the working poor will continue to provide care to this population if major sources of  
3 compensation for such care are eliminated, as will occur if Louisiana refuses to participate  
4 in the Medicaid expansion while the only other programs which finance medical care for the  
5 uninsured and the indigent are drastically reduced; and

6 WHEREAS, beyond the important financial and economic considerations noted  
7 herein, the Legislature of Louisiana does hereby affirm that the working poor of this state  
8 deserve access to at least some basic level of health care, and that actions taken to deny such  
9 access are fundamentally unfair and imprudent; and

10 WHEREAS, it is thus clear that for compelling economic and moral reasons,  
11 participation in the expansion of Medicaid eligibility is in the best interest of this state; and

12 WHEREAS, R.S. 49:969 provides that the legislature, by concurrent resolution, may  
13 suspend, amend, or repeal any rule adopted by a state department, agency, board, or  
14 commission.

15 THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that LAC  
16 50:III.501 is hereby amended to read as follows:

17 Part III. Eligibility

18 Subpart 1. General Administration

19 §501. Filing Application

20 A. Income eligibility. Commencing thirty days after federal approval of the  
21 Louisiana state plan to expand Medicaid eligibility in conformance with the Patient  
22 Protection and Affordable Care Act, or on January 1, 2015, whichever is later,  
23 persons eligible for Medicaid benefits shall include applicants who satisfy all of the  
24 following requirements:

25 1. have household income that is equal to or less than one hundred  
26 thirty-three percent of the federal poverty level;

27 2. meet criteria relative to mandatory coverage for individuals age 19  
28 through 64 as provided in the Patient Protection and Affordable Care Act (Public

1        Law No. 111-148) and codified in federal regulations relative to medical assistance  
2        program coverage (42 CFR 435.119);

3                3. meet all other eligibility criteria as the bureau determines to be applicable.

4                B. The bureau requires an applicant to complete and sign a written  
5        application in order to initiate the eligibility determination process for Medicaid  
6        benefits. The applicant's signature on the application affirms that all of the  
7        information contained on the form is true and correct or the applicant could be  
8        subject to a penalty for perjury. In order to facilitate the application process, the  
9        Bureau authorizes the electronic filing of Medicaid applications. Applications may  
10       be signed by the following means:

- 11               1. the applicant's signature on a paper application;  
12               2. a personal identification number (PIN); or a digital signature as issued by  
13       DHH (in the Louisiana Medicaid Manual).

14               ~~B.~~ C. The application may be filed by the applicant or one of the following  
15       individuals:

- 16               1. a parent;  
17               2. the legal guardian, which is a person legally responsible for the care and  
18       management of the person or property of one considered by law to be incompetent  
19       to manage his own affairs;  
20               3. a curator, which is any person acting under legal authority for an  
21       applicant/recipient who is determined by a court of law to be incompetent to take  
22       care of his own person or to administer his estate (an interdict); or  
23               4. someone acting responsibly for the applicant.

24               ~~C.~~ D. Assistance with Application

- 25               1. The applicant may choose an individual to accompany, assist, and/or  
26       represent him/her in the application or renewal process.  
27               2. The bureau must provide assistance if the applicant is unable to participate  
28       and has no responsible representation in the application process.

1           ~~D.~~ E. Grounds for Accepting/Rejecting Application. The applicant must  
2           cooperate in the process of determining eligibility by completing an application form  
3           and providing required information. The application may be rejected for  
4           non-cooperation only if the applicant, curator, parent or legal guardian is physically  
5           and mentally able to make application and provide information and either:

- 6                     1. does not provide information after being notified; or
- 7                     2. after being advised of the consequences, has failed to cooperate.

8           BE IT FURTHER RESOLVED that the secretary of the Department of Health and  
9           Hospitals is hereby authorized to implement the expansion of the Louisiana Medicaid  
10          program provided for in this Resolution in a manner that is the same as or substantially  
11          similar to any state expansion program heretofore approved by the Centers for Medicare and  
12          Medicaid Services which allows newly eligible Medicaid beneficiaries to acquire insurance  
13          policies through the health insurance exchange created by the ACA.

14          BE IT FURTHER RESOLVED that the secretary of the Department of Health and  
15          Hospitals is hereby authorized and directed to submit to the Centers for Medicare and  
16          Medicaid Services on or before September 1, 2014, any Medicaid state plan amendments  
17          and demonstration waiver applications as may be necessary to implement the provisions of  
18          this Resolution.

19          BE IT FURTHER RESOLVED that the clerk of the House of Representatives is  
20          hereby directed to transmit a copy of this Resolution to the Office of the State Register and  
21          to the secretary of the Department of Health and Hospitals.

22          BE IT FURTHER RESOLVED that the Office of the State Register is hereby  
23          directed to have the amendments to LAC 50:III.501 printed and incorporated into the  
24          Louisiana Administrative Code.

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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)]

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Edwards

HCR No. 1

Amends the Medicaid eligibility rules of DHH to cause La. Medicaid eligibility standards to expand in conformance with the provisions of the Affordable Care Act (ACA) beginning on the later of the following dates:

- (1) 30 days after federal approval of the La. state plan for Medicaid expansion.
- (2) Jan. 1, 2015.

Authorizes the secretary of DHH to implement Medicaid expansion in the same or a substantially similar manner as provided in any state expansion program heretofore approved by the federal Medicaid agency allowing newly eligible beneficiaries to acquire insurance policies through the health insurance exchange created by the ACA.

Authorizes and directs the secretary of DHH to submit to the federal Medicaid agency on or before Sept. 1, 2014, any state plan amendments and demonstration waiver applications as may be necessary to implement the Medicaid expansion.

(Amends LAC 50:III.501)