HLS 16RS-624 ORIGINAL

2016 Regular Session

HOUSE BILL NO. 309

BY REPRESENTATIVES BACALA AND HODGES

MEDICAID: Provides for cost containment, cost sharing, and long term services and supports in the Medicaid managed care program

1 AN ACT

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To amend and reenact R.S. 46:460.32, and to enact R.S. 39:100.61(B)(1)(c) and Part XIV of Chapter 3 of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 46:460.101 through 460.122, and Part XV of Chapter 3 of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 46:460.131 through 460.133, relative to the Medicaid managed care program of this state; to require implementation of cost containment measures in the Medicaid managed care program; to provide for duties of the Department of Health and Hospitals in administering the Medicaid managed care program; to require implementation of certain federally authorized Medicaid cost sharing functions; to restrict Medicaid coverage of nonemergency services delivered in hospital emergency departments; to require implementation of a managed long term services and supports system; to prohibit Medicaid coverage of certain prescription drugs; to provide for dedication of revenue derived from certain cost sharing functions; to authorize certain sources of monies for the New Opportunities Waiver Fund; to require promulgation of administrative rules; to provide for findings and definitions; and to provide for related matters.

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	Be it enacted by the Legislature of Louisiana:
2	Section 1. R.S. 39:100.61(B)(1)(c) is hereby enacted to read as follows:
3	§100.61. New Opportunities Waiver Fund
4	* * *
5	B.(1) The source of monies in the fund shall be as follows:
6	* * *
7	(c) Monies derived from Medicaid enrollee cost sharing required for
8	nonemergency services provided at hospital emergency rooms as authorized by the
9	provisions of R.S. 46:460.112.
10	* * *
11	Section 2. R.S. 46:460.32 is hereby amended and reenacted and Part XIV of Chapter
12	3 of Title 46 of the Louisiana Revised Statutes of 1950, comprised of R.S. 46:460.101
13	through 460.122, and Part XV of Chapter 3 of Title 46 of the Louisiana Revised Statutes of
14	1950, comprised of R.S. 46:460.131 through 460.133, are hereby enacted to read as follows:
15	§460.32. Prepaid coordinated care networks; pharmaceutical and therapeutics
16	committees; exclusion of certain drugs
17	A. On or before January 1, 2014, each prepaid coordinated care network
18	shall form a body to be designated as a "Pharmaceutical and Therapeutics
19	Committee" which shall develop a drug formulary and preferred drug list for the
20	prepaid coordinated care network. Each Pharmaceutical and Therapeutics
21	Committee created pursuant to the provisions of this Section shall meet no less
22	frequently than semiannually in Baton Rouge, Louisiana. Such meetings shall be
23	open to the public and shall allow for public comment prior to voting by the
24	committee on any change in the preferred drug list or formulary.
25	B. Each Pharmaceutical and Therapeutics Committee shall exclude from its
26	preferred drug list and shall prohibit prior authorization of all of the following
27	products:
28	(1) Any medication sold by a pharmaceutical company under a
29	trademark-protected name, known commonly as a "brand name drug", if a generic

1	equivalent medication is commercially available and is less costly than the net cost
2	of the brand name drug inclusive of all rebate amounts for the brand name drug.
3	(2) Any medication which has a nonprescription equivalent, known
4	commonly as an "over-the-counter" drug.
5	* * *
6	PART XIV. MEDICAID COST CONTAINMENT
7	SUBPART A. GENERAL PROVISIONS
8	§460.101. Definitions
9	As used in this Part, the following terms have the meaning ascribed in this
10	Section:
1	(1) "Centers for Medicare and Medicaid Services" means the division of the
12	United States Department of Health and Human Services which regulates the
13	Medicaid program.
14	(2) "Cost sharing" means a contribution that a Medicaid enrollee makes
15	toward the cost of a Medicaid-covered health service which he utilizes, through
16	mechanisms including but not limited to deductibles, copayments, and coinsurance.
17	(3) "Department" means the Department of Health and Hospitals.
18	(4) "Emergency room" means an emergency department operated within a
19	hospital facility licensed pursuant to the Hospital Licensing Law, R.S. 40:2100 et
20	seq.
21	(5) "Medicaid" and "medical assistance program" mean the medical
22	assistance program provided for in Title XIX of the Social Security Act.
23	(6) "Secretary" means the secretary of the Department of Health and
24	Hospitals.
25	§460.102. Legislative findings; declaration
26	A. The Legislature of Louisiana hereby finds and affirms the following:
27	(1) From state fiscal year 2007-2008 to state fiscal year 2015-2016:
28	(a) The total annual operating budget of this state decreased by eleven and
29	nine-tenths percent.

1	(b) Total expenditures on the Medicaid program of this state increased by
2	forty and nine-tenths percent.
3	(c) State expenditures on the Medicaid program increased by ninety-four and
4	seven-tenths percent.
5	(d) Medicaid remained the largest single item in Louisiana's operating
6	budget.
7	(2) At over eight billion three hundred eighty million dollars, Medicaid
8	comprises thirty-four and two-tenths percent of Louisiana's total operating budget
9	in state fiscal year 2015-2016; whereas Medicaid comprised twenty-one and five-
10	tenths percent of the state's operating budget in state fiscal year 2007-2008.
11	(3) Limiting Medicaid coverage of nonemergency services delivered in
12	hospital emergency departments is a sensible and fiscally responsible policy as it
13	provides a prudent means of containing Medicaid costs.
14	(4) Cost containment measures in the Medicaid program are essential means
15	for enhancing the efficiency and effectiveness of health care delivered to the
16	population served by the program.
17	B. The legislature hereby declares that cost containment in the Medicaid
18	program is an urgent fiscal and public health priority of this state.
19	SUBPART B. COST SHARING
20	§460.111. Federally authorized Medicaid cost sharing; implementation
21	A.(1) The secretary shall develop and implement medical assistance program
22	policies which apply each cost sharing function authorized pursuant to federal
23	Medicaid regulations, 42 CFR 447.50 et seq., to Medicaid enrollees who are not
24	specifically exempted from such cost sharing functions by the provisions of Section
25	1916 of the Social Security Act; except the secretary shall not be required to apply
26	any cost sharing function which is based upon an eligibility standard, health service,
27	or any other factor or measure which is not encompassed by the Medicaid program
28	of this state.

1	(2) The cost sharing functions authorized by this Subsection shall include,
2	without limitation, the following:
3	(a) Cost sharing for inpatient and outpatient services.
4	(b) Copayments for non-institutional care.
5	(c) Cost sharing for preferred and non-preferred drugs.
6	(d) Cost sharing for nonemergency services furnished in a hospital
7	emergency department.
8	(e) Assessment of premiums upon individuals whose income exceeds certain
9	levels specified in federal regulations.
10	(3) In implementing the cost sharing functions required in this Subsection,
11	the secretary shall set the amount of each cost assigned to nonexempt Medicaid
12	enrollees at a level allowed pursuant to 42 CFR 447.50 et seq. which maximizes the
13	net reduction of state Medicaid program expenditures resulting from the respective
14	cost sharing function.
15	(4) Whenever a Medicaid cost sharing function is added, deleted, expanded,
16	limited, or otherwise revised pursuant to rules and regulations promulgated by the
17	Centers for Medicare and Medicaid Services, the secretary shall, as soon as is
18	practicable pursuant to the effective date of such rules or regulations, revise and
19	reinstate pertinent medical assistance program policies correspondingly to provide
20	for such cost sharing functions and their respective levels in accordance with the
21	provisions of Paragraphs (1) and (2) of this Subsection.
22	B. The department shall implement the coverage limitation authorized by 42
23	CFR 447.54 for nonemergency use of a hospital emergency room in accordance with
24	the provisions of Subpart C of this Part.
25	§460.112. Revenue derived from certain cost sharing functions; dedication to New
26	Opportunities Waiver Fund
27	A. All state revenue derived as a result of the imposition of cost sharing for
28	nonemergency services furnished in a hospital emergency department, as authorized

1	by the provisions of R.S. 46:460.111, is hereby dedicated to the New Opportunities
2	Waiver Fund.
3	B. The state treasurer shall annually deposit into the New Opportunities
4	Waiver Fund monies in an amount equal to the reduction in Medicaid provider
5	reimbursements corresponding to the cost sharing amounts assessed to Medicaid
6	enrollees for nonemergency services furnished in hospital emergency departments
7	authorized by the provisions of this Subpart. Such monies may be utilized for any
8	purpose of the fund provided for in R.S. 39:100.61.
9	§460.113. Rules and regulations
10	The secretary shall promulgate all rules and regulations in accordance with
11	the Administrative Procedure Act, submit any Medicaid state plan amendments, and
12	take all other actions as are necessary to institute the Medicaid cost sharing functions
13	provided for in this Subpart.
14	SUBPART C. COVERAGE LIMITATION FOR
15	NONEMERGENCY SERVICES
16	§460.121. Limitation on coverage for nonemergent conditions
17	The secretary of the department shall develop and implement medical
18	assistance program policies which provide for a prohibition on Medicaid
19	reimbursement for any healthcare service delivered in an emergency room to a
20	Medicaid enrollee when all of the following conditions apply:
21	(1) The service is to treat any health condition classified by Medicaid
22	program policy as nonemergent.
23	(2) The enrollee has been treated in an emergency room for any health
24	condition classified by Medicaid program policy as nonemergent on three separate
25	occasions within the past year, and the Medicaid program provided reimbursement
26	on each occasion for such treatment.
27	§460.122. Rules and regulations
28	The secretary shall promulgate all rules and regulations in accordance with
29	the Administrative Procedure Act, submit any Medicaid state plan amendments, and

1	take all other actions as are necessary to institute the limitation on coverage for
2	nonemergent conditions provided for in this Subpart.
3	PART XV. MANAGED LONG TERM SERVICES AND SUPPORTS
4	§460.131. Definitions
5	As used in this Part, the following terms have the meaning ascribed in this
6	Section:
7	(1) "Department" means the Department of Health and Hospitals.
8	(2) "Managed long term services and supports" and "MLTSS" mean a
9	system for delivery of long term services and supports through a capitated Medicaid
10	managed care program.
11	(3) "Medicaid" and "medical assistance program" mean the medical
12	assistance program provided for in Title XIX of the Social Security Act.
13	(4) "Secretary" means the secretary of the Department of Health and
14	Hospitals.
15	§460.132. Legislative findings; declaration
16	A. The Legislature of Louisiana hereby finds and affirms the following:
17	(1) Since the initial statewide implementation of Medicaid managed care in
18	2012 which encompassed select groups of enrollees, the department has moved
19	incrementally to institute managed care for additional Medicaid populations and
20	services.
21	(2) As of January 1, 2016, the entirety of the Medicaid population of this
22	state was enrolled in managed care except for approximately seventy-two thousand
23	persons receiving long-term care services in institutional or home-based settings.
24	(3) The benefits of a managed long term services and supports system,
25	referred to hereafter in this Part as an "MLTSS system", include improved quality
26	of care and expanded service options for Medicaid enrollees who need long-term
27	care due to conditions associated with age or disability. Beyond improving care for
28	a vulnerable population, MLTSS systems also result in greater fiscal sustainability

1	of state Medicaid programs, as evidenced by fiscal outcomes in the growing number
2	of states that have implemented such a system.
3	(4) In accordance with the general timeline recommended by the Centers for
4	Medicare and Medicaid Services for optimal planning and implementation of an
5	MLTSS system, the department commenced preliminary steps in 2013 to implement
6	such a system beginning in October of 2015, but abandoned the effort in 2015 prior
7	to implementation.
8	B. The legislature hereby declares that the establishment of an MLTSS
9	system within the Medicaid program is a priority of this state.
10	§460.133. Managed long term services and supports; implementation
11	A.(1) The department shall submit to the Centers for Medicare and Medicaid
12	Services any new waiver application, amendment to an existing waiver, and
13	Medicaid state plan amendment as may be necessary to establish an MLTSS system
14	within the Medicaid managed care program through a waiver authorized pursuant to
15	Section 1915(b) of the Social Security Act.
16	(2) Such applications and amendments may include, but shall not be limited
17	to, the following:
18	(a) Amendments to the Community Choices Waiver and Adult Day Health
19	Care Waiver to operate under a managed care model concurrent with a Section
20	1915(b) waiver for MLTSS.
21	(b) Revisions to the Behavioral Health Services Waiver to exclude
22	populations covered through the MLTSS system.
23	(c) Amendments to authorize the operation of community behavioral health
24	services delivered pursuant to Section 1915(i) of the Social Security Act through
25	multiple managed care entities rather than a single prepaid inpatient health plan.
26	(d) The following changes to the Long-Term Personal Care Services
27	(LT-PCS) program:
28	(i) Amendments to allow self-direction to be implemented statewide within
29	the program.

1	(ii) Amendments to allow LT-PCS participants to purchase goods and
2	services.
3	(iii) Revision of the timeline for conducting LT-PCS reassessments from
4	annually to at least once every eighteen months.
5	B. The secretary shall promulgate all rules and regulations in accordance
6	with the Administrative Procedure Act as are necessary to institute the MTLSS
7	system provided for in this Part.
8	C. The secretary shall take all such actions as are necessary to ensure that
9	implementation of the MLTSS system provided for in this Part is effective not later
10	than July 1, 2016.
11	Section 3. This Act shall become effective upon signature by the governor or, if not
12	signed by the governor, upon expiration of the time for bills to become law without signature
13	by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
14	vetoed by the governor and subsequently approved by the legislature, this Act shall become
15	effective on the day following such approval.

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 309 Original

2016 Regular Session

Bacala

Abstract: Requires the Dept. of Health and Hospitals, to the extent allowed by federal regulations, to institute cost containment measures in the Medicaid managed care program; and to implement a Medicaid managed long term services and supports system.

General Provisions

Proposed law provides the following findings relative to the cost of the Medicaid program:

- (1) From state fiscal year 2007-2008 to state fiscal year 2015-2016:
 - The total annual operating budget of this state decreased by 11.9%. (a)
 - (b) Total expenditures on the Medicaid program of this state increased by 40.9%.
 - (c) State expenditures on the Medicaid program increased by 94.7%.
 - (d) Medicaid remained the largest single item in Louisiana's operating budget.

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(2) At over \$8,380,000,000, Medicaid comprises 34.2% of Louisiana's total operating budget in state fiscal year 2015-2016; whereas Medicaid comprised 21.5% of the state's operating budget in state fiscal year 2007-2008.

<u>Proposed law</u> declares that cost containment in the Medicaid program is an urgent fiscal and public health priority of this state.

Medicaid Pharmacy Limitations

<u>Present law</u> provides relative to private entities that contract with the Department of Health and Hospitals (DHH) to provide Medicaid benefits and services to enrollees in the Medicaid managed care program. Requires that each such entity form a body to be designated as a "Pharmaceutical and Therapeutics Committee" which shall develop a drug formulary and preferred drug list for the entity's Medicaid managed care network.

<u>Proposed law</u> retains <u>present law</u> and adds thereto a requirement that each Pharmaceutical and Therapeutics Committee exclude from its preferred drug list and prohibit prior authorization of all of the following products:

- (1) Any medication sold by a pharmaceutical company under a trademark-protected name, known commonly as a "brand name drug", if a generic equivalent medication is commercially available and is less costly than the net cost of the brand name drug inclusive of all rebate amounts for the brand name drug.
- (2) Any medication which has a nonprescription equivalent, known commonly as an "over-the-counter" drug.

Medicaid Cost Sharing

<u>Proposed law</u> requires DHH to develop and implement policies which apply each cost sharing function authorized pursuant to federal Medicaid regulations, 42 CFR 447.50 et seq., to Medicaid enrollees who are not specifically exempted from such cost sharing functions by federal law; except the secretary shall not be required to apply any cost sharing function which is based upon an eligibility standard, health service, or any other factor or measure which is not encompassed by the Medicaid program of this state.

Functions authorized pursuant to federal Medicaid regulations which <u>proposed law</u> requires DHH to impose include the following:

- (1) Cost sharing for inpatient and outpatient services (42 CFR 447.52).
- (2) Cost sharing for preferred and nonpreferred drugs (42 CFR 447.53).
- (3) Cost sharing for nonemergency services furnished in a hospital emergency department (42 CFR 447.54).
- (4) Assessment of premiums upon individuals whose income exceeds certain levels specified in federal regulations (42 CFR 447.55).

<u>Proposed law</u> provides that in implementing the cost sharing functions required in <u>proposed law</u>, DHH shall set the amount of each cost assigned to nonexempt Medicaid enrollees at a level allowed by federal regulations which maximizes the net reduction of state Medicaid program expenditures resulting from the respective cost sharing function.

<u>Proposed law</u> provides that whenever a Medicaid cost sharing function is added, deleted, expanded, limited, or otherwise revised pursuant to rules and regulations promulgated by the federal Medicaid agency, DHH shall revise and reinstate the pertinent policies correspondingly to provide for such cost sharing functions and their respective levels.

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<u>Proposed law</u> dedicates to the New Opportunities Waiver Fund all state revenues derived as a result of the cost sharing requirements provided for in <u>proposed law</u>. Provides that the state treasurer shall annually deposit into the New Opportunities Waiver Fund monies in an amount equal to the net reduction in Medicaid provider reimbursements corresponding to the cost sharing amounts assessed to Medicaid enrollees pursuant to <u>proposed law</u>.

Coverage Limitation for Nonemergency Services

<u>Proposed law</u> requires DHH to develop and implement policies which prohibit Medicaid reimbursement for any healthcare service delivered in an emergency room to a Medicaid enrollee when all of the following conditions apply:

- (1) The service is to treat any health condition classified by Medicaid program policy as nonemergent.
- (2) The enrollee has been treated in an emergency room for any health condition classified by Medicaid program policy as nonemergent on three separate occasions within the past year, and the Medicaid program provided reimbursement on each occasion for such treatment.

Managed Long Term Services and Supports

<u>Proposed law</u> defines "managed long term services and supports" and "MLTSS" as a system for delivery of long term services and supports through a capitated Medicaid managed care program.

<u>Proposed law</u> requires DHH to submit to the federal Medicaid agency any new waiver application, amendment to an existing waiver, and Medicaid state plan amendment as may be necessary to establish an MLTSS system within the Medicaid managed care program through a waiver authorized pursuant to Section 1915(b) of the Social Security Act. Provides that such applications and amendments may include, but shall not be limited to, the following:

- (1) Amendments to the Community Choices Waiver and Adult Day Health Care Waiver to operate under a managed care model concurrent with a Section 1915(b) waiver for MLTSS.
- (2) Revisions to the Behavioral Health Services Waiver to exclude populations covered through the MLTSS system.
- (3) Amendments to authorize the operation of community behavioral health services delivered pursuant to Section 1915(i) of the Social Security Act through multiple managed care entities rather than a single prepaid inpatient health plan.
- (4) The following changes to the Long-Term Personal Care Services (LT-PCS) program:
 - (a) Amendments to allow self-direction to be implemented statewide within the program.
 - (b) Amendments to allow LT-PCS participants to purchase goods and services.
 - (c) Revision of the timeline for conducting LT-PCS reassessments from annually to at least once every eighteen months.

<u>Proposed law</u> requires DHH to promulgate all rules and regulations in accordance with the Administrative Procedure Act as are necessary to institute the MTLSS system provided for in <u>proposed law</u>.

<u>Proposed law</u> provides that the secretary of DHH shall take all such actions as are necessary to ensure that implementation of the MLTSS system provided for in <u>proposed law</u> is effective not later than July 1, 2016.

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

 $(Amends\,R.S.\,46:460.32;\,Adds\,R.S.\,39:100.61(B)(1)(c),\,R.S.\,46:460.101-460.122,\,and\,R.S.\,46:460.131-460.133)$