

Regular Session, 2013

SENATE BILL NO. 76

BY SENATOR BUFFINGTON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FUNDS/FUNDING. Provides for use of monies in the Louisiana Medical Assistance Trust Fund. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 46:2623 and 2625, relative to the Louisiana Medical Assistance  
3 Trust Fund; to provide for sub-accounts within the fund; to provide for the use of the  
4 fund; to provide for the disposition of health care provider fees; and to provide for  
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 46:2623 and 2625 are hereby amended and reenacted to read as  
8 follows:

9 §2623. Louisiana Medical Assistance Trust Fund

10 A. There is hereby established as a special fund in the state treasury the  
11 Louisiana Medical Assistance Trust Fund, hereinafter referred to as the "fund",  
12 which shall consist of monies generated by the fees on providers of health care  
13 services collected under the authority of R.S. 46:2625. The monies in the fund shall  
14 be available for appropriation by the legislature to the Medicaid program solely in  
15 ~~order to accomplish the purposes of this Chapter~~ **as provided for in Subsection C**  
16 **of this Section**. The monies in the fund shall be invested by the state treasurer in the  
17 same manner as monies in the state general fund. All interest earned from the

1 investment of monies in the fund shall be deposited in and remain to the credit of the  
2 fund. All unexpended and unencumbered monies remaining in the fund at the close  
3 of each fiscal year shall remain in the fund.

4 B. ~~The monies from the fund as appropriated by the legislature shall be used~~  
5 ~~and expended under the supervision of the secretary of the Department of Health and~~  
6 ~~Hospitals for the Medicaid program.~~ **(1) Within the fund there shall be segregated**  
7 **sub-accounts, one for each health care provider group that pays fees pursuant**  
8 **to R.S. 46:2625. Monies collected from each health care provider group shall**  
9 **accrue to the sub-account of that health care provider group.**

10 **(2) Monies shall be allocated, with accompanying federal matching**  
11 **money, to each of the health care provider groups in proportion to the amount**  
12 **of fees collected in each sub-account, based upon fees established by the**  
13 **Department of Health and Hospitals pursuant to R.S. 46:2625. Such allocation**  
14 **shall be calculated using collections data from the most recent four quarters**  
15 **where data is available prior to the state fiscal year for which the allocation will**  
16 **be made.**

17 **C.(1) Notwithstanding any other provisions of this Chapter, the**  
18 **legislature shall be authorized to appropriate as state funds to the department**  
19 **for use in any fiscal year, all revenues dedicated and deposited into each**  
20 **segregated sub-account. Such appropriations shall be made for the sole purpose**  
21 **to obtain federal financial participation in the provision of support to health**  
22 **care provider groups listed in R.S. 46:2625. Any appropriation from the**  
23 **segregated sub-account for any purpose other than medical assistance payments**  
24 **to health care provider groups listed in R.S. 46:2625 shall be void.**

25 **(2) Appropriations from monies generated by health care provider group**  
26 **fees, including federal financial participation on those fees shall be expended as**  
27 **follows: for the fiscal year commencing July 1, 2013, and fiscal years thereafter,**  
28 **all of such appropriations in each sub-account shall be used for the purpose of**  
29 **Medicaid reimbursement payments to the health care provider groups**

1 **generating those fees listed in R.S. 46:2625.**

2 ~~€. D.~~ The monies in the fund shall not be used to displace, replace, or  
3 supplant appropriations from the state general fund for the Medicaid program below  
4 the amount of state general fund appropriations to the agency for the ~~1992-1993~~  
5 **2012-2013** Fiscal Year.

6 ~~Đ. E.~~ The state treasurer shall report the status of the fund **and its sub-**  
7 **accounts** at least quarterly to the secretary of the Department of Health and  
8 Hospitals **and the Joint Legislative Committee on the Budget.**

9 ~~E. Use of the monies in the fund shall be limited to those programs for which~~  
10 ~~federal financial participation under Title XIX of the Social Security Act is available.~~

11 \* \* \*

12 §2625. Fees on health care providers; disposition of fees

13 A.(1) The Department of Health and Hospitals is hereby authorized to adopt  
14 and impose fees for health care services provided by the Medicaid program on every  
15 nursing facility, every intermediate care facility for people with developmental  
16 disabilities, every pharmacy in the state of Louisiana and certain out-of-state  
17 pharmacies, dispensing physicians, and medical transportation providers. The  
18 amount of any fee shall not exceed the total cost to the state of providing the health  
19 care service subject to such fee. In addition, the amount of the fees imposed under  
20 the rules and regulations adopted shall not exceed the following: **maximum allowed**  
21 **by federal law and regulations.**

22 ~~(a) Ten dollars per occupied bed per day for nursing facilities.~~

23 ~~(b) Thirty dollars per occupied bed per day for intermediate care facilities for~~  
24 ~~people with developmental disabilities.~~

25 ~~(c) Ten cents per out-patient prescription.~~

26 ~~(d) Ten cents per out-patient out-of-state prescription.~~

27 ~~(e) Ten cents per out-patient prescription dispensed by dispensing physicians.~~

28 ~~(f) Seven dollars and fifty cents per medical service trip for medical~~  
29 ~~transportation providers.~~

1 (2) Any fee authorized by and imposed pursuant to this Section shall be  
2 considered an allowable cost for purposes of insurance or other third party  
3 reimbursements and shall be included in the establishment of reimbursement rates.

4 (3) Subject to the exceptions contained in Article VII, Section 9(A) of the  
5 Constitution of Louisiana, all fees collected pursuant to the authority granted in this  
6 Section shall be paid into the state treasury and shall be credited to the Bond Security  
7 and Redemption Fund. Out of the funds remaining in the Bond Security and  
8 Redemption Fund after a sufficient amount is allocated from that fund to pay all  
9 obligations secured by the full faith and credit of the state which become due and  
10 payable within any fiscal year, the treasurer shall, prior to placing such remaining  
11 funds in the state general fund, pay into the Louisiana Medical Assistance Trust Fund  
12 an amount equal to the total amount of such fees collected.

13 ~~B. Notwithstanding any other provision of law to the contrary, except the~~  
14 ~~maximum fee of ten dollars as provided in R.S. 46:2625(A)(1)(a), the Department~~  
15 ~~of Health and Hospitals shall not impose any new fee or increase any fee on any~~  
16 ~~nursing home on or after April 1, 1992, without prior approval of the specific fee~~  
17 ~~amount by record vote of a majority of the elected members of each house of the~~  
18 ~~legislature while in session. Any such fee imposed or increased by the department~~  
19 ~~on or after such date shall be null and of no effect.~~

20 ~~€. **B.**(1)~~ The department is hereby authorized and directed to adopt and  
21 promulgate, pursuant to the Administrative Procedure Act, such rules and regulations  
22 as are necessary to administer the fees imposed herein, including but not limited to  
23 rules and regulations regarding the collection and payment of the fees and the  
24 records necessary to be maintained and made available by the providers on whom  
25 the fees are imposed. Any such information, other than the amount of fees collected  
26 from each provider and the total amount of revenues generated by the fees authorized  
27 herein, which is received by any department or agency of the state pursuant to this  
28 Chapter shall be held confidential.

29 (2) The department is authorized and directed to adopt and promulgate,

1 pursuant to the Administrative Procedure Act, rules and regulations governing the  
2 rights and obligations of those on whom said fees will be imposed. Such rules and  
3 regulations shall include the administrative appeal rights and procedures governing  
4 disputes arising out of the collection or administration of the fees authorized herein,  
5 subject to the provisions of Subsection ~~E~~ **D** of this Section.

6 ~~D~~. **C**. The governor, by executive order, may designate any agency,  
7 department, or division of state government to collect the fees authorized herein.

8 ~~E~~. **D**.(1) All disputes arising from submission of reports and fees due from  
9 a pharmacy which are deemed untimely as described herein or disputes regarding the  
10 amount of fees due from a pharmacy pursuant to Paragraph A(1) of this Section shall  
11 be handled as provided in this Subsection. All other disputes regarding pharmacy  
12 fees pursuant to this Section which are not related to timeliness and accuracy of  
13 reports or fees due the department, or which involve fees due from a dispensing  
14 physician under this Section, shall be handled as provided for in rules promulgated  
15 pursuant to Paragraph ~~E~~ **B**(2) of this Section.

16 (2) Beginning January 1, 2000, the Louisiana Board of Pharmacy, hereinafter  
17 "the board", shall take necessary action to suspend the registration and permit of any  
18 registered in-state or out-of-state pharmacy which fails to timely submit a quarterly  
19 statement with the Department of Health and Hospitals containing the number of  
20 prescriptions filled, compounded, or dispensed, and delivered in or into the state of  
21 Louisiana during the previous three-month period, or for failure to timely submit the  
22 appropriate prescription fees due pursuant to this Section. A report or fee shall be  
23 considered untimely if it is received by the department thirty days after the close of  
24 the most recent quarter. Each report of the quarterly statement shall be signed and  
25 verified as to accuracy of information contained therein by the preparer of the  
26 statement on a form provided by the department.

27 (3) The board in consultation with the department shall promulgate rules, in  
28 accordance with the Administrative Procedure Act, as necessary to comply with the  
29 requirements of the board herein, including rules to strictly define criteria for

1 exceptions to the suspension requirements herein, and to provide rules for  
2 reinstatement procedures. Any revocation action taken pursuant to this Subsection  
3 shall proceed in accordance with laws and rules applicable to suspension of  
4 pharmacy permits in general, including the hearing and appeal rights provided  
5 pursuant to R.S. 37:1200 and 1201.

6 (4) The department shall promptly notify the board by certified mail of any  
7 reports or fees as described herein which are untimely as described herein, or fees  
8 in which the department considers the amount due from the pharmacy to be in  
9 dispute thirty calendar days after the date such fees are due to be received by the  
10 department. A copy of such notification shall also be sent by certified mail to the  
11 pharmacy which is the subject of the untimely reports or fees. The department shall  
12 promulgate rules, in accordance with the Administrative Procedure Act, as necessary  
13 to comply with the requirements of this Subsection, including rules to continuously  
14 apprise the board of fees and reports received by the department from any pharmacy  
15 which has been referred to the board for suspension proceedings.

16 (5) Nothing in this Subsection shall be construed to prevent the department  
17 from enforcing existing rules which assess monetary penalties against a pharmacy  
18 for late filing of reports or fees, which are not otherwise in conflict with the  
19 provisions herein.

20 Section 2. This Act shall become effective upon signature by the governor or, if not  
21 signed by the governor, upon expiration of the time for bills to become law without signature  
22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
23 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
24 effective on the day following such approval.

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The original instrument was prepared by Christopher D. Adams. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jay Lueckel.

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#### DIGEST

Buffington (SB 76)

Present law provides for the Louisiana Medical Assistance Trust Fund and how monies from the fund as appropriated by the legislature shall be used and expended under the supervision

of the secretary of the Department of Health and Hospitals (DHH) for the Medicaid program.

Proposed law amends present law to provide for within the fund there shall be segregated sub-accounts, one for each health care provider group that pays fees pursuant to present law. Proposed law provides monies collected from each health care provider group shall accrue to the sub-account of that health care provider group. Proposed law provides monies shall be allocated, with accompanying federal matching money, to each of the health care provider groups in proportion to the amount of fees collected in each sub-account, based upon fees established by DHH pursuant to present law, and such allocation shall be calculated using collections data from the most recent four quarters where data is available prior to the state fiscal year for which the allocation will be made.

Proposed law provides the legislature shall be authorized to appropriate as state funds to the department for use in any fiscal year, all revenues dedicated and deposited into each segregated sub-account. Proposed law provides such appropriations shall be made for the sole purpose to obtain federal financial participation in the provision of support to health care provider groups listed in present law. Proposed law provides any appropriation from the segregated sub-account for any purpose other than medical assistance payments to health care provider groups listed in present law shall be void. Appropriations from monies generated by health care provider group fees, including federal financial participation on those fees, shall be expended as follows:

For the first year commencing July 1, 2013, and fiscal years thereafter, all of such appropriations in each sub-account shall be used for the purpose of Medicaid reimbursement payments to the health care provider groups generating those fees listed in present law.

Proposed law amends present law to provide the monies in the fund shall not be used to displace, replace, or supplant appropriations from the state general fund for the Medicaid program below the amount of state general fund appropriations to the agency for the 2012-2013 Fiscal Year.

Proposed law amends present law to provide the state treasurer shall report the status of the fund and its sub-accounts at least quarterly to the secretary of DHH and the Joint Legislative Committee on the Budget.

Proposed law amends present law to remove the requirement that use of the monies in the fund shall be limited to those programs for which federal financial participation under Title XIX of the Social Security Act is available.

Present law provides DHH is hereby authorized to adopt and impose fees for health care services provided by the Medicaid program on every nursing facility, every intermediate care facility for people with developmental disabilities, every pharmacy in the state of Louisiana and certain out-of-state pharmacies, dispensing physicians, and medical transportation providers.

Proposed law amends present law to provide the amount of the fees imposed under the rules and regulations adopted shall not exceed the maximum allowed by federal law and regulations.

Proposed law amends present law and removes the requirement that notwithstanding any other provision of law to the contrary, except the maximum fee of ten dollars as provided in present law, DHH shall not impose any new fee or increase any fee on any nursing home on or after April 1, 1992, without prior approval of the specific fee amount by record vote of a majority of the elected members of each house of the legislature while in session. Any such fee imposed or increased by DHH on or after such date shall be null and of no effect.

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

(Amends R.S. 46:2623 and 2625)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Finance to the original bill

1. Relative to appropriations from the La. Medical Assistance Trust Fund and monies generated by provider groups which are segregated into sub-accounts, changes the implementation date from a three year phase-in to full implementation July 1, 2013.
2. Prohibits using monies in the fund to displace, replace, or supplant appropriations from the state general fund for the Medicaid program below the amount of such funds for the 2012-2013 Fiscal Year.