

Regular Session, 2013

HOUSE BILL NO. 233

BY REPRESENTATIVES SMITH, BADON, BARROW, WESLEY BISHOP, BROSSETT, BURRELL, KATRINA JACKSON, JAMES, MORENO, AND PATRICK WILLIAMS AND SENATOR BROOME

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

MEDICAID: Creates the La. Health Care Independence Program

1 AN ACT

2 To enact Chapter 8-B of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 46:979.1 through 979.6, relative to the medical assistance program; to
4 provide for eligibility for benefits of the medical assistance program; to require state
5 participation in the medical assistance program expansion provided in federal law;
6 to provide for definitions; to provide for legislative findings and intent; to provide
7 for reform of the Medicaid program in Louisiana; to provide for termination; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 8-B of Title 46 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 46:979.1 through 979.6, is hereby enacted to read as follows:

12 CHAPTER 8-B. LOUISIANA HEALTH CARE INDEPENDENCE PROGRAM

13 §979.1. Title

14 This Chapter shall be known and may be cited as the "Louisiana Health Care
15 Independence Act".

16 §979.2. Definitions

17 As used in this Chapter, the following terms shall have the meaning ascribed
18 to them in this Section:

1 (1) "ACA" and "Affordable Care Act" mean the following acts of congress,
2 collectively:

3 (a) The Patient Protection and Affordable Care Act, which originated as H.R.
4 3590 in the One Hundred Eleventh United States Congress and became Public Law
5 111-148.

6 (b) The Health Care and Education Reconciliation Act, which originated as
7 H.R. 4872 in the One Hundred Eleventh United States Congress and became Public
8 Law 111-152.

9 (2) "Cost sharing" means the portion of the cost of a covered medical service
10 that must be paid by or on behalf of eligible individuals, consisting of copayments
11 or coinsurance, but not deductibles.

12 (3) "Department" means the Department of Health and Hospitals.

13 (4) "Health insurance marketplace" means the federal vehicle created to help
14 individuals, families, and small businesses shop for and select health insurance
15 coverage in a way that permits comparison of available qualified health plans based
16 upon price, benefits, services, and quality, regardless of the governance structure of
17 the marketplace.

18 (5) "Independence account" means individual financing structures that
19 operate similar to a health savings account or a medical savings account.

20 (6) "Medicaid" and "medical assistance program" mean the medical
21 assistance program provided for in Title XIX of the Social Security Act.

22 (7) "Premium" means a charge that must be paid as a condition of enrolling
23 in health care coverage.

24 (8) "Program" means the Louisiana Health Care Independence Program
25 established by this Chapter.

26 (9) "Qualified health plan" means a federally certified individual health
27 insurance plan offered by a carrier through the federal health insurance marketplace.

28 (10) "Secretary" means the secretary of the Department of Health and
29 Hospitals.

1 §979.3. Legislative findings; purpose

2 A. The Legislature of Louisiana does hereby find and declare the following:

3 (1) The Affordable Care Act, referred to hereafter in this Chapter as the
4 "ACA", sets forth health policy reforms which reshape the way virtually all
5 Americans will receive and finance their health care.

6 (2) In a decision announced on June 28, 2012, the Supreme Court of the
7 United States in *National Federation of Independent Business Et Al. v. Sebelius,*
8 *Secretary of Health and Human Services, Et Al.* upheld the overall constitutionality
9 of the ACA; but in the same ruling, a majority of the court held that the mandatory
10 expansion of Medicaid eligibility as provided in the ACA is unconstitutionally
11 coercive of states, thereby making participation in the Medicaid expansion a
12 voluntary proposition for each state.

13 (3) At twenty-five percent of the federal poverty level, or just under five
14 thousand eight hundred dollars in annual income for a family of four presently, the
15 income eligibility threshold of this state for Medicaid benefits for parents of
16 Medicaid-eligible children is the second-lowest in the nation.

17 (4) The legislature declares that due to compelling moral and economic
18 reasons, participation in the expansion of Medicaid eligibility as provided in the
19 ACA is in the best interest of this state.

20 B. The purposes of this state in expanding Medicaid eligibility to conform
21 to the standards provided in the ACA, as required by this Chapter, are as follows:

22 (1) To maximize the number of Louisianians who are covered by some form
23 of health insurance.

24 (2) To provide basic health coverage to the working poor of the state who
25 are not offered insurance through their employer and do not earn enough money to
26 meet basic family needs and pay for private health insurance.

27 (3) To assure health care providers who serve low- to moderate-income
28 persons of some amount of compensation for the care they provide, as the ACA

1 provides for a dramatic reduction in funding to federal programs which currently
2 finance care for the uninsured as a means of financing the Medicaid expansion.

3 (4) To avert the economic and human costs of crises in both access to health
4 care and health services financing which are likely to result from not participating
5 in an expansion of a major federal program while other sources of financing for
6 medical care for the uninsured and the indigent are being drastically reduced or
7 eliminated.

8 §979.4. Expansion of Medicaid eligibility in Louisiana; administration of the
9 Louisiana Health Care Independence Program by the Department of Health
10 and Hospitals

11 A. The department shall create and administer the Louisiana Health Care
12 Independence Program within the department. After receiving the approval of the
13 Senate and House committees on health and welfare, the department shall on or
14 before September 1, 2013, submit and apply for all of the following:

15 (1) Federal waivers necessary to implement the program in a manner
16 consistent with this Chapter, including without limitation approval for a
17 comprehensive waiver under Section 1115 of the Social Security Act, 42 U.S.C.
18 1315.

19 (2) Medicaid state plan amendments necessary to implement the program in
20 a manner consistent with this Chapter.

21 (3) Those Medicaid state plan amendments that are optional and therefore
22 may be revoked by the state at its discretion.

23 B.(1) As part of its actions, the department shall confirm that employers shall
24 not be subject to the penalties, including without limitation an assessable payment,
25 under Section 1513 of Pub. L. No. 111-148, as existing on January 1, 2013,
26 concerning shared responsibility, for employees who are eligible individuals if the
27 employees meet either of the following criteria:

28 (a) Are enrolled in the program.

1 (b) Enroll in a qualified health plan through the federal health insurance
2 marketplace.

3 (2) If the department is unable to confirm provisions under this Section, the
4 program shall not be implemented.

5 C.(1) Implementation of the program shall be contingent upon the receipt of
6 necessary federal approvals.

7 (2) If the department does not receive the necessary federal approvals, the
8 program shall not be implemented.

9 D. The program shall include premium assistance for eligible individuals to
10 enable their enrollment in a qualified health plan through the federal health insurance
11 marketplace.

12 E.(1) The department is hereby specifically authorized to pay premiums and
13 supplemental cost-sharing subsidies directly to the federally qualified health plans
14 for enrolled eligible individuals.

15 (2) The intent of the payments under this Subsection is to increase
16 participation in the health insurance market, intensify price pressures, and reduce
17 costs for both publicly and privately funded health care.

18 F. The department shall accomplish all of the following to the extent
19 allowable by law:

20 (1) Pursue strategies that promote insurance coverage of children in their
21 parents' or caregivers' plan, including children eligible for the Louisiana Children's
22 Health Insurance Program (LaCHIP).

23 (2) Develop and implement a strategy to inform Medicaid recipient
24 populations whose needs would be reduced or better served through participation in
25 the federal health insurance marketplace.

26 G. The program authorized by this Chapter shall terminate within one
27 hundred twenty days after a reduction in any of the following federal medical
28 assistance percentages for services to individuals determined eligible under the new

1 adult group and who are considered to be newly eligible as defined in section
2 1905(y)(2)(A) of the Patient Protection and Affordable Care Act:

3 (1) One hundred percent in 2014, 2015, or 2016.

4 (2) Ninety-five percent in 2017.

5 (3) Ninety-four percent in 2018.

6 (4) Ninety-three percent in 2019.

7 (5) Ninety percent in 2020 or any year after 2020.

8 H. An eligible individual enrolled in the program shall affirmatively
9 acknowledge the existence of all of the following facts:

10 (1) The program shall not be a perpetual federal or state right or a guaranteed
11 entitlement.

12 (2) The program shall be subject to cancellation upon appropriate notice.

13 (3) The program shall not be an entitlement program.

14 I.(1) The department shall develop a model and seek from the Centers for
15 Medicare and Medicaid Services all necessary waivers and approvals to allow
16 non-aged, non-disabled program-eligible participants to enroll in a program that shall
17 create and utilize independence accounts that operate similar to a health savings
18 account or medical savings account during the calendar year 2015.

19 (2) The independence accounts shall accomplish all of the following
20 functions:

21 (a) Allow a participant to purchase cost-effective high-deductible health
22 insurance.

23 (b) Promote independence and self-sufficiency.

24 (3) The state shall implement cost sharing and copayments, and establish as
25 a condition of participation that earnings shall exceed fifty percent of the applicable
26 federal poverty level.

27 (4) Participants may receive rewards based on healthy living and
28 self-sufficiency.

1 (5)(a) At the end of each fiscal year, if there are funds remaining in the
2 account, a majority of the state's contribution shall remain in the participant's control
3 as a positive incentive for the responsible use of the health care system and personal
4 responsibility of health maintenance.

5 (b) Uses of the funds may include, without limitation, rolling the funds into
6 a private sector health savings account for the participant according to rules
7 promulgated by the department.

8 (c) The department shall promulgate rules to implement this Section in
9 accordance with the Administrative Procedure Act, and shall project, track, and
10 report state obligations for uncompensated care to identify potential incremental
11 future decreases.

12 (d) The department shall recommend appropriate adjustments in funding to
13 the legislature.

14 (e) Adjustments shall be made by the legislature as appropriate.

15 J. On a quarterly basis, the department shall report to the Joint Legislative
16 Committee on the Budget, within two weeks of the end of each quarter, information
17 regarding the following aspects of the program:

18 (1) Program enrollment.

19 (2) Patient experience.

20 (3) Economic impact including enrollment distribution.

21 (4) Carrier competition.

22 (5) Success in avoiding uncompensated care.

23 §979.5. Medicaid program outcomes; reporting requirements

24 A. On or before July 1, 2014, and annually thereafter, the secretary of the
25 department shall provide to the House and Senate committees on health and welfare
26 and to the governor a written report covering the most recent one-year period which
27 includes at minimum all of the items required hereafter in this Section.

28 B. The secretary shall make the report provided for in this Section publicly
29 available on its Internet website.

1 C. The report shall include but shall not be limited to the following items:

2 (1) Evaluation of overall health outcomes and quality of care for Medicaid
3 enrollees of this state and recommendations for policy changes to improve such
4 outcomes and quality of care. Measurements on which the secretary shall base the
5 evaluation provided for in this Paragraph shall be derived from a metric which is
6 generally accepted by public and private health care providers such as the Healthcare
7 Effectiveness Data and Information Set (HEDIS).

8 (2) Evaluation of major barriers to access to health care by Medicaid
9 enrollees of this state and recommendations for policy changes to eliminate such
10 barriers.

11 (3) Summary of successful initiatives in this state for disease prevention and
12 early diagnosis and management of chronic conditions among Medicaid enrollees of
13 this state.

14 (4) Trends in enrollment of health care providers in the Medicaid program
15 of this state during the period covered by the report.

16 (5) Major challenges faced by health care providers enrolled in the Medicaid
17 program of this state and recommendations for policy changes to address such
18 challenges.

19 (6) Impacts on health outcomes and health care costs in the state during the
20 period covered by the report which resulted from participation by health care
21 providers enrolled in the Medicaid program in any federal or state initiatives for
22 coordinated care or patient-centered medical homes.

23 (7) Such other information as the secretary deems appropriate to convey a
24 clear and sufficiently complete assessment of the impact of the Medicaid program
25 in this state.

26 §979.6. Termination

27 The provisions of this Chapter shall terminate and become null and void on
28 and after July 1, 2017.

1 Section 2. This Act shall become effective upon signature by the governor or, if not
 2 signed by the governor, upon expiration of the time for bills to become law without signature
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 5 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)]

Smith

HB No. 233

Abstract: Creates the La. Health Care Independence Program within the La. Medicaid program and requires reporting of Medicaid program outcomes to the legislative committees on health and welfare and to the governor.

Proposed law creates the Louisiana Health Care Independence Program, referred to hereafter as the "program", to be comprised of all of the following components and functions, and subject to conditions as follows:

- (1) On or before Sept. 1, 2013, and after receiving the approval of the legislative committees on health and welfare, DHH shall submit and apply for federal waivers necessary to implement the program in a manner consistent with proposed law, including without limitation approval for a comprehensive waiver under Section 1115 of the Social Security Act.
- (2) DHH shall confirm that employers will not be subject to the penalties, including without limitation an assessable payment, under Section 1513 of Pub. L. No. 111-148, as existing on Jan. 1, 2013, concerning shared responsibility, for employees who are eligible individuals if the employees are enrolled in the program and enroll in a qualified health plan through the federal health insurance marketplace.
- (3) Implementation of the program shall be contingent upon the receipt of necessary federal approvals.
- (4) The program shall include premium assistance for eligible individuals to enable their enrollment in a qualified health plan through the federal health insurance marketplace.
- (5) DHH is authorized to pay premiums and supplemental cost-sharing subsidies directly to the federally qualified health plans for enrolled eligible individuals.
- (6) DHH is required to pursue strategies that promote insurance coverage of children in their parents' or caregivers' plan, including children eligible for the Louisiana Children's Health Insurance Program (LaCHIP); and to develop and implement a strategy to inform Medicaid recipient populations whose needs would be reduced or better served through participation in the federal health insurance marketplace.

- (7) The program shall terminate within 120 days after a reduction in any enhanced federal medical assistance percentages for services to newly eligible individuals as defined in the Patient Protection and Affordable Care Act.
- (8) Program enrollees shall affirmatively acknowledge that the program is not a perpetual federal or state right or a guaranteed entitlement, is subject to cancellation with notice, and is not an entitlement program.
- (9) DHH shall develop a model and seek from the Centers for Medicare and Medicaid Services all necessary waivers and approvals to allow non-aged, non-disabled program-eligible participants to enroll in a program that creates and utilizes for specified purposes "independence accounts" that operate similar to health savings accounts or medical savings accounts during the calendar year 2015.
- (10) DHH is required to report to the Joint Legislative Committee on the Budget on a quarterly basis, and within two weeks of the end of each quarter, information regarding program enrollment, patient experience, economic impact, carrier competition, and success in avoiding uncompensated care.

Proposed law requires that on or before July 1, 2014, and annually thereafter, the secretary of DHH shall provide to the legislative committees on health and welfare and the governor a written report covering the most recent one-year period which includes at minimum all of the following items:

- (1) Evaluation of overall health outcomes and quality of care for La. Medicaid enrollees, and recommendations for policy changes to improve such outcomes and quality of care. Requires that the secretary base such evaluation on measurements derived from a metric which is generally accepted by public and private health care providers such as the Healthcare Effectiveness Data and Information Set (HEDIS).
- (2) Evaluation of major barriers to access to health care by La. Medicaid enrollees and recommendations for policy changes to eliminate such barriers.
- (3) Summary of successful initiatives in La. for disease prevention and early diagnosis and management of chronic conditions among Medicaid enrollees.
- (4) Trends in enrollment of health care providers in the La. Medicaid program during the period covered by the report.
- (5) Major challenges faced by health care providers enrolled in the La. Medicaid program and recommendations for policy changes to address such challenges.
- (6) Impacts on health outcomes and health care costs in La. during the period covered by the report which resulted from participation by health care providers enrolled in the Medicaid program in any federal or state initiatives for coordinated care or patient-centered medical homes.
- (7) Such other information as the secretary deems appropriate to convey a clear and sufficiently complete assessment of the impact of the Medicaid program in La.

Proposed law requires DHH to make such report publicly available on its website.

Proposed law terminates and becomes null and void on and after July 1, 2017.

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

(Adds R.S. 46:979.1-979.6)

Summary of Amendments Adopted by House

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

1. Deleted provisions requiring the secretary of DHH to take such actions as are necessary to expand Louisiana's Medicaid eligibility standards to conform to those established by the Affordable Care Act (ACA) commencing on Jan. 1, 2014. Added in lieu thereof provisions creating the Louisiana Health Care Independence Program, referred to hereafter as the "program", to be comprised of all of the following components and functions, and subject to conditions as follows:
 - (a) On or before Sept. 1, 2013, and after receiving the approval of the legislative committees on health and welfare, DHH shall submit and apply for federal waivers necessary to implement the program in a manner consistent with proposed law, including without limitation approval for a comprehensive waiver under Section 1115 of the Social Security Act.
 - (b) DHH shall confirm that employers will not be subject to the penalties, including without limitation an assessable payment, under Section 1513 of Pub. L. No. 111-148, as existing on Jan. 1, 2013, concerning shared responsibility, for employees who are eligible individuals if the employees are enrolled in the program and enroll in a qualified health plan through the federal health insurance marketplace.
 - (c) Implementation of the program shall be contingent upon the receipt of necessary federal approvals.
 - (d) The program shall include premium assistance for eligible individuals to enable their enrollment in a qualified health plan through the federal health insurance marketplace.
 - (e) DHH is authorized to pay premiums and supplemental cost-sharing subsidies directly to the federally qualified health plans for enrolled eligible individuals.
 - (f) DHH is required to pursue strategies that promote insurance coverage of children in their parents' or caregivers' plan, including children eligible for the Louisiana Children's Health Insurance Program (LaCHIP); and to develop and implement a strategy to inform Medicaid recipient populations whose needs would be reduced or better served through participation in the federal health insurance marketplace.
 - (g) The program shall terminate within 120 days after a reduction in any enhanced federal medical assistance percentages for services to newly eligible individuals as defined in the Patient Protection and Affordable Care Act.
 - (h) Program enrollees shall affirmatively acknowledge that the program is not a perpetual federal or state right or a guaranteed entitlement, is subject to cancellation with notice, and is not an entitlement program.
 - (i) DHH shall develop a model and seek from the Centers for Medicare and Medicaid Services all necessary waivers and approvals to allow non-aged, non-disabled, program-eligible participants to enroll in a program that creates and utilizes for specified purposes "independence

accounts" that operate similar to health savings accounts or medical savings accounts during the calendar year 2015.

- (j) DHH is required to report to the Joint Legislative Committee on the Budget on a quarterly basis, and within two weeks of the end of each quarter, information regarding program enrollment, patient experience, economic impact, carrier competition, and success in avoiding uncompensated care.
- (k) All provisions authorizing and providing for the program shall terminate and become null and void on and after July 1, 2017.