

Regular Session, 2013

HOUSE CONCURRENT RESOLUTION NO. 8

BY REPRESENTATIVE EDWARDS

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

HEALTH CARE: Amends administrative rules to provide that La. Medicaid eligibility standards conform to those established in the Affordable Care Act

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, the ACA sets forth health policy reforms which reshape the way  
14 virtually all Americans will receive and finance their health care; and

15 WHEREAS, among the key features of the ACA are rights and protections for health  
16 care consumers, accountability measures for insurance companies, expanded eligibility for  
17 the Medicaid program, and a requirement that every American maintain a minimum level  
18 of health insurance coverage; and

1           WHEREAS, in a decision announced on June 28, 2012, the United States Supreme  
2 Court in *National Federation of Independent Business Et Al. v. Sebelius, Secretary of Health*  
3 *and Human Services, Et Al.* upheld the overall constitutionality of the ACA; and

4           WHEREAS, in the same ruling, a majority of the court held that the penalty for a  
5 state's nonparticipation in the expansion of Medicaid eligibility as provided in the ACA is  
6 unconstitutionally coercive because it entails withholding of all federal funds for existing  
7 Medicaid programs if a state does not expand Medicaid eligibility; and

8           WHEREAS, the effect of this aspect of the court's decision is to make participation  
9 in the Medicaid expansion optional for each state; and

10           WHEREAS, at twenty-five percent of the federal poverty level, or just under five  
11 thousand eight hundred dollars in annual income for a family of four presently, the income  
12 eligibility threshold of this state for Medicaid benefits for parents of Medicaid-eligible  
13 children is the second-lowest in the nation; and

14           WHEREAS, the working poor of this state would benefit greatly from the expansion  
15 of Medicaid income eligibility, as provided in the ACA, to one hundred thirty-three percent  
16 of the federal poverty level, or thirty thousand seven hundred thirty-three dollars in annual  
17 income for a family of four presently; and

18           WHEREAS, correspondingly, the working poor will be penalized to the greatest  
19 extent financially by the provisions of the ACA if this state refuses to participate in the  
20 Medicaid expansion and those families fail to maintain health coverage after January 1,  
21 2014, as required by law; and

22           WHEREAS, the ACA provides that Medicaid benefits for households who become  
23 eligible due to the expansion will be financed entirely with federal funds for the first three  
24 years of the expansion and that the federal share of funding for benefits to these newly  
25 eligible enrollees will phase down from one hundred percent to ninety percent between 2017  
26 and 2020, with the federal share remaining at ninety percent in ensuing years; and

27           WHEREAS, health care for Louisiana workers who do not qualify for Medicaid,  
28 whose jobs do not provide health benefits, and who cannot afford private health insurance  
29 has traditionally been financed by the Medicaid and Medicare Disproportionate Share

1 Hospital (DSH) programs, which currently provide major support to providers that furnish  
2 uncompensated care to low-income uninsured persons; and

3 WHEREAS, the ACA stipulates that beginning in 2014, the federal government will  
4 dramatically reduce DSH funding as presently uninsured Americans obtain either private  
5 health insurance or Medicaid coverage as provided in the ACA; and

6 WHEREAS, a state refusing to participate in the Medicaid expansion while faced  
7 with dramatically reduced DSH funding would create a truly untenable situation for working  
8 poor families and for all hospitals of the state, as the federal Emergency Medical Treatment  
9 and Active Labor Act (EMTALA) requires hospitals to provide care to anyone needing  
10 emergency treatment regardless of their ability to pay, and this law includes no provisions  
11 for reimbursing hospitals for such care; and

12 WHEREAS, beginning in 2014, the ACA provides for a penalty of up to three  
13 thousand dollars per employee on private businesses with fifty or more employees which do  
14 not provide health insurance, but specifically exempts businesses from this penalty if their  
15 employees qualify for Medicaid coverage; and

16 WHEREAS, a recent analysis by the tax accounting firm Jackson Hewitt concluded  
17 that absent this state's participation in the Medicaid expansion, the employer penalty for  
18 failure to ensure some form of employee health coverage as provided in the ACA would cost  
19 Louisiana businesses, collectively, between fifty-one million and seventy-seven million  
20 dollars annually; and

21 WHEREAS, the costs to private enterprise described above, which are entirely  
22 avoidable if Louisiana participates in the Medicaid expansion, would significantly impede  
23 job creation and economic growth in this state; and

24 WHEREAS, in order for any study of the net fiscal effect on this state of the  
25 Medicaid expansion to be accurate, the study must consider both the cost of the expansion  
26 to the state as well as the offsetting savings resulting from avoidance of what the state would  
27 have paid toward uncompensated care costs, which is approximately a forty percent share  
28 of those costs at present with the remaining costs financed by federal funding; and

1           WHEREAS, while no reliable fiscal impact study of this type has been produced for  
2 Louisiana as of the date of filing of this Resolution, it is reasonable to assume based on the  
3 evidence currently available that such a study would find the Medicaid expansion to produce  
4 a net savings or be cost neutral for this state; and

5           WHEREAS, a finding of net savings for Louisiana resulting from the Medicaid  
6 expansion would be consistent with the federal-level fiscal study conducted by the  
7 Congressional Budget Office which found that full implementation of the ACA would result  
8 in a net reduction in federal budget deficits of two hundred ten billion dollars over the  
9 ten-year period of 2012 to 2021; and

10           WHEREAS, the sizeable positive impact of health care spending on local and state  
11 economies and the economic multiplier effect of such spending have been extensively  
12 documented through analyses conducted by the United States Department of Health and  
13 Human Services in 2005 and 2012; and in studies commissioned by the American Medical  
14 Association, the American Academy of Family Physicians, and state medical societies; and

15           WHEREAS, it is unreasonable to assume that health care providers which currently  
16 serve the working poor will continue to provide care to this population if all sources of  
17 compensation for such care are eliminated, as would occur if Louisiana refuses to participate  
18 in the Medicaid expansion while the only other programs which finance medical care for the  
19 uninsured and the indigent are drastically reduced; and

20           WHEREAS, beyond the important economic considerations noted above, the  
21 legislature of Louisiana does hereby affirm that the working poor of this state deserve access  
22 to at least some basic level of health care, and that a deliberate effort to deny such access  
23 would be as unwise as it is unjust; and

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

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

1         THEREFORE, BE IT RESOLVED by the legislature of Louisiana that LAC  
2         50:III.501 is hereby amended to read as follows:

3   Part III. Eligibility

4   Subpart 1. General Administration

5             §501. Filing Application

6                         A. Income eligibility. Beginning on January 1, 2014, applicants eligible for  
7                         Medicaid benefits shall include persons who have household income that is at or  
8                         below one hundred thirty-three percent of the federal poverty level and who meet  
9                         criteria relative to mandatory coverage for individuals age 19 through 64 as provided  
10                        in the Patient Protection and Affordable Care Act (Public Law No. 111-148) and  
11                        codified in federal regulations relative to medical assistance program coverage (42  
12                        CFR 435.119).

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

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

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

- 25                        1. a parent;
- 26                        2. the legal guardian, which is a person legally responsible for the care and  
27                        management of the person or property of one considered by law to be incompetent  
28                        to manage his own affairs;

1           3. a curator, which is any person acting under legal authority for an  
2 applicant/recipient who is determined by a court of law to be incompetent to take  
3 care of his own person or to administer his estate (an interdict); or

4           4. someone acting responsibly for the applicant.

5           ~~C.~~ D. Assistance with Application

6           1. The applicant may choose an individual to accompany, assist, and/or  
7 represent him/her in the application or renewal process.

8           2. The bureau must provide assistance if the applicant is unable to participate  
9 and has no responsible representation in the application process.

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

15           1. does not provide information after being notified; or

16           2. after being advised of the consequences, has failed to cooperate.

17          BE IT FURTHER RESOLVED that the secretary of the Department of Health and  
18 Hospitals is hereby authorized and directed to submit to the Centers for Medicare and  
19 Medicaid Services on or before September 1, 2013, any Medicaid state plan amendment as  
20 may be necessary to implement the provisions of this Resolution.

21          BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the  
22 Office of the State Register and to the secretary of the Department of Health and Hospitals.

23          BE IT FURTHER RESOLVED that the Office of the State Register is hereby  
24 directed to have the amendments to LAC 50:III.501 printed and incorporated into the  
25 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. 8

Amends LAC 50:III.501 of the Medicaid eligibility rules of DHH to provide that La. Medicaid eligibility standards conform to those established in the Affordable Care Act (also known as federal health reform). Authorizes and directs the secretary of DHH to submit to the Centers for Medicare and Medicaid Services on or before Sept. 1, 2013, any Medicaid state plan amendment as may be necessary to implement such expansion of Medicaid eligibility.

(Amends LAC 50:III.501)