

Document: Emergency Rule

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**TITLE 405 OFFICE OF THE SECRETARY OF
FAMILY AND SOCIAL SERVICES**

LSA Document #01-117(E)

DIGEST

Temporarily adds provisions affecting applicants, enrollees, eligibility and enrollment requirements, benefits, and policy for the Indiana prescription drug program. Authority: IC 4-22-2-37.1; IC 12-10-16-5(b). The original emergency document, LSA Document #01-4(E), as printed at 24 IR 1367, effective January 3, 2001, expires April 3, 2001. Effective April 3, 2001.

SECTION 1. Under IC 12-10-16-3, the office of the secretary of family and social services hereby adopts and promulgates this emergency rule to:

- (1) interpret and implement the provisions of IC 12-10-16-3 to provide assistance with the expense of prescription drugs for low-income seniors; and**
- (2) ensure the efficient, economical, and reasonable operation of the Indiana prescription drug program.**

SECTION 2. On an annual basis, the office shall provide a report describing the program's activities, and such other information pertaining to the program as may be requested, to the state budget agency.

SECTION 3. The definitions in SECTIONS 4 through 28 of this document apply throughout this document unless the context clearly indicates another meaning.

SECTION 4. "Applicant" means the person for whom Indiana prescription drug program enrollment is requested.

SECTION 5. "Benefit period" means a specified time frame during which an enrollee accrues the cost of prescription drugs. The benefit periods are specified in SECTION 37 of this document.

SECTION 6. "Child" means any child for whom the applicant or spouse has legal guardianship or legal custody, and who is either less than eighteen (18) years of age, or between eighteen (18) and twenty-one (21) years of age and a student.

SECTION 7. "Complete application" means an application that includes the following information about the applicant and applicant's spouse, if applicable:

- (1) Name.**
- (2) Address.**
- (3) Date of birth.**
- (4) Whether the person had health insurance in the past six (6) months.**
- (5) Whether the person currently has insurance that includes a prescription drug benefit.**
- (6) Whether the person is on Medicaid.**
- (7) Whether the person has lived in Indiana for at least ninety (90) days in the past twelve (12) months.**
- (8) Proof of income.**
- (9) Signature.**

SECTION 8. "Earned income" means income the applicant earns through employment.

SECTION 9. "Eligible" means a person who meets all requirements for enrollment in the program.

SECTION 10. "Enrollee" means an applicant who has met all requirements and has been enrolled into the program.

SECTION 11. "Family" means the applicant, spouse, and any child who live in the same residence.

SECTION 12. “Family member standard” means the difference between the net monthly income limit for a family of two (2) and a family of three (3).

SECTION 13. “Federal poverty guideline” means the nonfarm income official poverty guideline as determined annually by the federal Office of Management and Budget.

SECTION 14. “Health insurance with a prescription drug benefit” means any contract with an insurance company or organization approved or recognized by the department of insurance under which an individual receives health benefits, including a prescription drug benefit. The term includes Medicaid and veteran’s benefits. A prescription discount card offered by an insurance company or organization is not considered to be a prescription drug benefit.

SECTION 15. “Indiana prescription drug program” means the program established by IC 12-10-16.

SECTION 16. “Net income” means the earned and unearned income that an applicant and an applicant’s family receives, calculated on a monthly basis.

SECTION 17. “Not eligible” means a person who does not meet one (1) or more of the requirements for enrollment in the program.

SECTION 18. “Office” means the office of the secretary of family and social services.

SECTION 19. “Prescription drug” means any legend drug covered under the Medicaid fee-for-service program, as defined in 405 IAC 5-24-3, and insulin.

SECTION 20. “Prescription printout” means an itemized report prepared by a pharmacy for an enrollee showing prescription data for the enrollee for a stated benefit period. Such prescription data must include, but is not limited to, the following:

- (1) Enrollee name and address.**
- (2) Prescription number.**
- (3) NDC Code.**
- (4) Drug name.**
- (5) Drug strength.**
- (6) Dosage form.**
- (7) Quantity dispensed.**
- (8) Date of dispense.**
- (9) The amount paid by the enrollee or any insurance plan.**

SECTION 21. “Program” means the Indiana prescription drug program.

SECTION 22. “Proof of income” means documentation of the earned and unearned income of an applicant and an applicant’s family.

SECTION 23. “Refund certificate” means the document issued to an enrollee by the office that authorizes the enrollee to request a refund for prescription drugs purchased during a benefit period.

SECTION 24. “Refund period” means the period of time during which an enrollee can submit a refund certificate and prescription printout in order to request a refund for prescription drugs purchased during a corresponding benefit period. The refund periods are specified in SECTION 43 of this document.

SECTION 25. “Secretary” means the secretary of family and social services.

SECTION 26. “Senior” means a person sixty-five (65) years of age or older.

SECTION 27. “Spouse” means the legal husband or wife of an applicant.

SECTION 28. "Unearned income" means income the applicant receives from a source other than employment, including, but not limited to, the following:

- (1) Social Security.
- (2) Supplemental Security Income.
- (3) Pensions.
- (4) Income from assets.

SECTION 29. (a) An application for the program shall be filed on the form prescribed by the office and shall include proof of income.

(b) An application shall be made in a manner prescribed by the office and can be made at any time.

(c) An application for the program may be filed on behalf of an applicant by any of the following:

- (1) The applicant.
- (2) The applicant's spouse.
- (3) A court-appointed guardian of the applicant.
- (4) By power of attorney.

(d) The applicant may use an authorized representative to apply for the program. The authorization must be in writing and signed by a person authorized to file an application under subsection (c).

SECTION 30. For purposes of determining the effective date of availability of the program to an applicant, the date of application is the date the application is received by the office.

SECTION 31. The program is available to an applicant beginning with the benefit period prior to the one in which the applicant applies for enrollment in the program. The program is not available for prescription drugs purchased prior to the month in which the applicant turned sixty-five (65) years of age.

SECTION 32. To be eligible for the program, an applicant must be sixty-five (65) years of age or older.

SECTION 33. (a) To be eligible for the program, an applicant's monthly family net income must not exceed the income limit listed below for the applicant's family size:

Family Size	Net Monthly Income Limit
1	\$ 940
2	\$1,266
3	\$1,592

(b) For each additional family member over three (3), the family member standard shall be added to the net monthly income limit for a family of three (3) in order to calculate the net monthly income limit. A child who earns more than the family member standard per month is not included in the calculation of monthly net income or in family size.

(c) The monthly net income limits are determined by multiplying the federal poverty guideline for each family size by one hundred thirty-five percent (135%), dividing by twelve (12), and then rounding up to the next whole dollar.

(d) The income standards in subsection (a) shall increase annually in the same percentage amount that is applied to the federal poverty guideline. The increase shall be effective on the first day of the second month following the month of publication of the federal poverty guideline in the Federal Register.

SECTION 34. Notwithstanding any other provision of this document, an individual is not eligible for the program if any of the following apply:

- (1) The individual had health insurance with a prescription drug benefit during the prior benefit period and, at the time of application, the individual has health insurance with a prescription drug benefit.
- (2) The individual has not resided in Indiana for ninety (90) days or more during the past twelve (12) months.

(3) The individual is an inmate of a correctional facility.

SECTION 35. The program shall issue a partial refund to an enrollee for the purchase of prescription drugs, as defined in SECTION 19 of this document, based upon the limitations set forth in SECTION 36 of this document.

SECTION 36. (a) The refund issued to an enrollee per benefit period is limited by family income as follows:

Income Guideline	Individual's Monthly Net Income	Couple's Monthly Net Income	Annual Benefit
Up to 135% of federal poverty guideline	Up to \$940 per month	Up to \$1,266 per month	50% refund, up to \$500 benefit/year
Up to 120% of federal poverty guideline	Up to \$835 per month	Up to \$1,125 per month	50% refund, up to \$750 benefit/year
Under 100% of federal poverty guideline	Up to \$696 per month	Up to \$938 per month	50% refund, up to \$1,000 benefit/year

(b) An enrollee and spouse who are enrolled in the program will each receive the maximum refund of prescription drug expenses up to the annual benefit in subsection (a) for which they qualify by family income level.

(c) The benefit income guidelines are determined by multiplying the federal poverty guideline for each family size by each income guideline percentage, dividing by twelve (12), and then rounding up to the next whole dollar.

(d) The benefit income guidelines in subsection (a) shall increase annually in the same percentage amount that is applied to the federal poverty guideline. The increase shall be effective on the first day of the second month following the month of publication of the federal poverty guideline in the Federal Register.

SECTION 37. The program shall consist of four (4) benefit periods per year, defined as follows:

- (1) Benefit period one: October 1 through December 31.
- (2) Benefit period two: January 1 through March 31.
- (3) Benefit period three: April 1 through June 30.
- (4) Benefit period four: July 1 through September 30.

SECTION 38. The program is available to an enrollee for a maximum of four (4) consecutive benefit periods. To reenroll in the program following the expiration of the enrollee's last benefit period, a new application must be submitted to the office in accordance with this document.

SECTION 39. (a) An enrollee is ineligible for a refund for prescription drugs purchased during any benefit period in which the enrollee has health insurance with a prescription drug benefit.

(b) Ineligibility for a refund under subsection (a) does not terminate enrollment in the program. An enrollee may request a refund during any later benefit period during which the enrollee does not have health insurance with a prescription drug benefit.

SECTION 40. (a) Upon submission of a completed refund certificate, benefits are available under this program on a first come, first serve basis.

(b) Benefits will exist under this program to the extent that appropriations are available for the program.

(c) The state budget director shall determine if appropriations are available to continue paying benefits to enrollees.

SECTION 41. (a) A complete application will be processed by the office.

(b) An applicant who submits an incomplete application will be deemed ineligible for the program. Such an applicant may reapply for the program at any time or may file for written review of the determination in accordance with this document.

SECTION 42. Once the office has processed a complete application, the applicant will receive a letter of eligibility by mail notifying the applicant of his or her status in the program. An applicant will either be eligible and enrolled in the program, or ineligible and not enrolled in the program.

SECTION 43. (a) An enrollee will receive up to four (4) refund certificates with a letter of eligibility that enrolls the applicant into the program.

(b) Each refund certificate corresponds to one of four (4) refund periods as defined below:

(1) Refund period one: January 1 through March 31.

(2) Refund period two: April 1 through June 30.

(3) Refund period three: July 1 through September 30.

(4) Refund period four: October 1 through December 31.

(c) Each refund period corresponds to one (1) benefit period set forth as follows:

Benefit Period	Refund Period
October 1 through December 31	January 1 through March 31
January 1 through March 31	April 1 through June 30
April 1 through June 30	July 1 through September 30
July 1 through September 30	October 1 through December 31

SECTION 44. (a) During each refund period, the enrollee must submit the applicable refund certificate with the prescription printout for the corresponding benefit period to the office in the manner prescribed by the office.

(b) The refund period deadline is the date that corresponds to the later of thirty-five (35) days from the date on the letter of eligibility or the last day of the applicable refund period.

(c) An enrollee will be notified by mail if the enrollee submits an incomplete request for refund. An incomplete request for refund includes any of the following:

(1) An unsigned refund certificate.

(2) A refund certificate with no insurance verification.

(3) A prescription printout that fails to state all information in SECTION 20 of this document.

(4) The absence of a refund certificate for the applicable benefit period.

(5) The absence of a prescription printout for the applicable benefit period.

(6) The absence of any other information that is necessary under this document to process a refund request.

The enrollee must submit the information requested in the letter of notification by the deadline in the letter of notification.

(d) Refund certificates received by the office after the refund deadline date will not be processed and no refund will be issued. Any refund certificate or prescription printout requested in subsection (c) that is received by the office after the stated deadline date will not be processed and no refund will be issued.

SECTION 45. (a) It is the purpose of SECTIONS 45 through 54 of this document to establish a uniform method of administrative review and administrative adjudication for appeals concerning applicants and enrollees of the program, in order to determine whether or not any action for which there is a complaint was done in accordance with state statutes,

regulations, rules, and policies. As used in SECTIONS 44 through 54 of this document, “policies” includes program manuals, administrative directives, transmittals, and other official written pronouncements of state policy.

(b) SECTIONS 45 through 54 of this document shall be construed in such a manner as to provide all parties with an adequate opportunity to be heard in accordance with due process of law. As used in this document, “party” means:

- (1) a person to whom the agency action is specifically directed; or
- (2) the office of the secretary of family and social services.

(c) In the event that any provision of this document is deemed to be in conflict with any other provision of state statute, regulation, or rule that is specifically applicable to the program, then such other statute, regulation, or rule shall supersede that part of this document in which the conflict is found.

SECTION 46. (a) In the event that the rights, duties, obligations, privileges, or other legal relations of any person or entity are required or authorized by law to be determined by the office, then such person or entity may request an administrative review by the office as provided for in SECTION 47 of this document.

(b) Unless otherwise provided by law, only those persons or entities, or their respective attorneys at law, whose rights, duties, obligations, privileges, or other legal relations are alleged to have been adversely affected by any action or determination of the office, may request administrative review under SECTION 47 of this document. Any alleged harm to an enrollee or applicant must be direct and immediate to the party and not indirect and general in character.

SECTION 47. (a) Any party complaining of an action of the office in accordance with this document may file a request for administrative review as provided in this SECTION.

(b) The enrollee or applicant is required to seek administrative review prior to filing an administrative appeal under SECTION 49 of this document.

(c) Unless otherwise provided for by statute, regulation, or rule, a request for administrative review by an enrollee or applicant shall be filed in writing with the office not later than thirty-five (35) days following the date of the action being reviewed.

SECTION 48. (a) Upon receipt of a request for administrative review, the office will conduct a review of the action.

(b) Upon completion of the review, the office will issue a written decision. The decision will be final unless a party requests an administrative appeal in accordance with this document.

(c) The written decision shall specify the reasons for the decision and identify the statutes, regulations, rules, and policies supporting the decision.

SECTION 49. (a) Any party who is not satisfied with the administrative review of the office as provided for in this document may file a request for an administrative appeal as provided in this SECTION. The person or entity requesting the administrative appeal shall be known as the appellant.

(b) Unless otherwise provided for by statute, regulation, or rule, appeal requests by an appellant shall be filed in writing with the hearings and appeals section of the family and social services administration not later than thirty (30) days following the effective date of the administrative review being appealed. Appeal hearings shall be conducted at a reasonable time, place, and date.

(c) The hearings and appeals section of the family and social services administration, upon application of any party, or in its own discretion, may consolidate appeals to promote administrative efficiency. Hearings may only be consolidated in cases in which the sole issue involved is one of state law or policy.

(d) Any party filing an appeal under this SECTION is not excused from exhausting all interim procedures that may be required by statute or rule for administrative review prior to the filing of an administrative appeal. Any issues not raised within the interim review procedures of the administrative review in a timely manner are waived and shall not be an issue

during the evidentiary hearing of the administrative appeal.

(e) The hearings and appeals section of the family and social services administration will schedule evidentiary hearings and issue notices to the parties regarding the date, time, and location of the scheduled hearing.

(f) A continuance of a hearing will be granted only for good cause shown. An objection to a request for a continuance shall be considered before a continuance is granted or denied. Requests for a continuance shall be in writing and accompanied by adequate documentation of the reasons for the request. Good cause includes:

- (1) inability to attend the hearing because of a serious physical or mental condition;
- (2) incapacitating injury;
- (3) death in the family;
- (4) severe weather conditions making it impossible to travel to the hearing;
- (5) unavailability of a witness and the evidence cannot be obtained otherwise; or
- (6) other reasons similar to those listed in this SECTION.

If the appellant is represented by counsel, the request for continuance must also include alternative dates for the scheduling of a new hearing. However, the hearings and appeals section may schedule a new hearing without respect to the requested date if such date cannot be accommodated or confirmed with the requesting attorney within a reasonable time of the request.

SECTION 50. (a) An administrative law judge's (ALJ) conduct shall be in a manner that promotes public confidence in the integrity and impartiality of the administrative hearing process. The ALJ who conducts a hearing is prohibited from:

- (1) consulting any party or party's agent on any fact in issue unless upon notice and opportunity for all parties to participate;
- (2) performing any of the investigative or prosecutorial functions of the family and social services administration in the administrative appeal heard or to be heard by him or her or in a factually related administrative or judicial action;
- (3) being influenced by partisan interests, public clamor, or fear of criticism;
- (4) conveying or permitting others to convey the impression that they are in a special position to influence the ALJ;
- (5) commenting publicly, except as to hearing schedules or procedures, about pending or impending proceedings; or
- (6) engaging in financial or business dealings that tend to:
 - (A) reflect adversely on his or her impartiality;
 - (B) interfere with the proper performance of his or her duties;
 - (C) exploit the ALJ's position; or
 - (D) involve the ALJ in frequent financial business dealings with attorneys or other persons who are likely to come before the ALJ.

(b) An ALJ shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, or in which the ALJ's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision. Nothing in this subsection prohibits a person who is an employee of the family and social services administration from serving as an ALJ.

(c) The ALJ shall be authorized to do the following:

- (1) Administer oaths and affirmations.
- (2) Issue subpoenas.
- (3) Rule upon offers of proof.
- (4) Receive relevant evidence.
- (5) Facilitate discovery in accordance with the Indiana rules of trial procedure.
- (6) Regulate the course of the hearing and conduct of the parties.
- (7) Hold informal conferences for the settlement or simplification of the issues under appeal.
- (8) Dispose of procedural motions and similar matters.
- (9) Exercise such other powers as may be given by the law relating to the particular program area under appeal.

SECTION 51. (a) The administrative law judge (ALJ) shall conduct the hearing in an informal manner and without recourse to the technical common law rules of evidence.

(b) The ALJ shall exclude from consideration irrelevant, immaterial, or unduly repetitious evidence.

(c) Every party shall have the right to submit evidence. In the event that an objection to evidence is sustained, the party proffering the evidence may make an offer of proof. Each party shall have the right to cross-examine the witnesses and offer rebutting evidence.

SECTION 52. (a) Following completion of the hearing, or after submission of briefs by the parties (if briefing is permitted by the administrative law judge (ALJ)), the ALJ shall issue his or her decision in the matter concurrently to the parties. The decision shall be final unless a party requests agency review of the decision in accordance with this document.

(b) The ALJ's decision shall:

- (1) include findings of fact;**
- (2) specify the reasons for the decision; and**
- (3) identify the evidence and statutes, regulations, rules, and policies supporting the decision.**

(c) The findings of fact need not include a recitation of every piece of evidence admitted in the evidentiary hearing. Rather, the findings should contain the basic facts that have formed the basis for the ALJ's ultimate decision. The ALJ's decision must also cite the relevant laws upon which the ultimate decision is based, and relate the facts to the law.

SECTION 53. (a) Any party who is not satisfied with the decision of the administrative law judge (ALJ) may request agency review of the decision within ten (10) days of receipt thereof in accordance with instructions issued with the decision.

(b) After receiving a request for agency review of a hearing decision, the hearings and appeals section of the family and social services administration shall notify the parties when the decision will be reviewed. The agency review shall be completed by the secretary of the family and social services administration or the secretary's designee. All such reviews shall be conducted upon the record, as defined in SECTION 52 of this document, except that a transcript of the oral testimony shall not be necessary for review unless the party requests that one be transcribed at the party's expense.

(c) No new evidence will be considered during the agency review; however, any party wishing to submit a memorandum of law, citing evidence in the record, may do so pursuant to instructions issued by the hearings and appeals section of the family and social services administration.

(d) The secretary of family and social services administration or the secretary's designee shall review the ALJ's decision to determine if the decision is supported by the evidence in the record and is in accordance with statutes, regulations, rules and policies applicable to the issues under appeal.

(e) Following the review of the secretary or designee, the secretary or designee shall issue a written decision:

- (1) affirming the decision of the ALJ;**
- (2) amending or modifying the decision of the ALJ;**
- (3) reversing the decision of the ALJ;**
- (4) remanding the matter to the ALJ for further specified action; or**
- (5) making such other order or determination as is proper on the record.**

(f) The parties will be issued a written notice of the action taken as a result of the agency review. If the decision of the ALJ is reversed, amended, or modified, the secretary or designee shall state the reasons for the action in the written decision.

(g) The hearings and appeals section of the family and social services administration shall distribute the written notice on agency review to do the following:

- (1) All parties of record.**
- (2) The ALJ who rendered the decision following the evidentiary hearing.**
- (3) Any other person designated by the secretary or designee.**

SECTION 54. (a) The record of the administrative proceedings shall be that as defined in IC 4-21.5-3-33.

(b) If the appellant is not satisfied with the secretary's final action after agency review, he or she may file for judicial review in accordance with IC 4-21.5-5.

(c) The appellant is required to seek agency review prior to filing a petition for judicial review.

SECTION 55. **This document expires July 2, 2001, or on the effective date of LSA Document #00-228(F) [LSA Document #00-228(F) was filed with the secretary of state March 8, 2001, 11:19 a.m.: 24 IR 2456.], whichever is sooner.**

LSA Document #01-117(E)

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