



**Louisiana Department of Health
Health Plan Advisory 20-16
July 15, 2020**

Class Action Lawsuit: *AJ v. LDH*

This notice explains the class-action lawsuit titled *A.J., a minor child by and through his mother, Donnell Creppel, et al., versus the Louisiana Department of Health, et al.*, 3:19-CV-00324 (hereinafter, "*AJ v. LDH*") and the implementation and operation of key provisions of the settlement agreement in that litigation.

Member Class

Class members in *AJ v. LDH* are defined as follows: All current and future Medicaid recipients under the age of twenty-one (21) in Louisiana who are certified in the Children's Choice Waiver, the New Opportunities Waiver, the Supports Waiver, or the Residential Options Waiver who are also prior authorized to receive extended home health services or intermittent nursing services which do not require prior authorization but are not receiving some or all of the hours of extended home health services or intermittent nursing services as authorized by the defendants.

Definitions

"1915(c) Waiver" refers to medical assistance programs under Louisiana Medicaid approved by the secretary of the United States Department of Health and Human Services that provide payment for home or community-based services, other than room and board, pursuant to a written plan of care to individuals with respect to whom there has been a determination, but for the provision of such services, that the individual would require the level of care provided in a hospital, in a nursing facility, or in an intermediate care facility for the intellectually or developmentally disabled, the cost of which could be reimbursed under the Louisiana Medicaid State Plan. 1915(c) Waiver programs in Louisiana Medicaid include the Children's Choice Waiver, the New Opportunities Waiver, the Supports Waiver, and the Residential Options Waiver.

“Extended home health” (EHH) refers to any Louisiana Medicaid State Plan service in which it is determined medically necessary for either a registered nurse (RN) or a licensed practical nurse (LPN) currently licensed to practice in Louisiana, to provide a minimum of three (3) continuous hours per day of nursing services, as defined in the Louisiana Nurse Practice Act, pursuant to a written plan of care outside of an institutional setting. This term also refers to shift nursing care in the home and/or, as described in 42 U.S.C. § 1396a(d)(8) and 42 C.F.R. § 440.80, private duty nursing services for the purpose of caring for class members.

“Intermittent nursing” (IN) refers to the Louisiana Medicaid State Plan service that allows for the provision of a daily nursing visit lasting less than three (3) continuous hours without prior authorization.

“Prior authorization” or “prior authorized” (PA) refers to the request for medical assistance services submitted by a health care provider participating in Louisiana Medicaid on behalf of the participant to Louisiana Medicaid and determined to be medically necessary in accordance with generally accepted, evidence-based medical standards prior to the delivery of the particular service.

“Support coordination” (SC) services or “case management” (CM) services means those services furnished by a support coordinator to assist participants in a 1915(c) Waiver under Louisiana Medicaid, who reside in a community setting or are transitioning to a community setting, in gaining access to needed medical, social, education, and other services in accordance with 42 C.F.R. §§ 440.169 and 441.18. The assistance provided by support coordinators in assisting eligible participants is set forth in 42 C.F.R. § 440.169(d)-(e).

Litigation Summary

AJ v. LDH, filed on May 22, 2019, seeks to enforce rights under the EPSDT and reasonable promptness mandates of Title XIX of the Social Security Act; the Americans with Disabilities Act, 42 U.S.C. § 12132; and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a) by compelling the Department to arrange for the in-home skilled nursing care prior authorized for Medicaid-enrolled, medically fragile children. Because of their medical needs, class members have been prior authorized to receive EHH services to be able to live in the community. Data reflect gaps between the EHH service amounts prior authorized and the EHH service amounts actually delivered to class members. Potential service gaps in medically necessary IN services to class members also fall under the scope of the litigation. The suit has been settled, and the corresponding settlement agreement was approved by the court on March 31, 2020.

Prohibited Acts

Managed care organizations are prohibited from reducing prior approved EHH service amounts for class members to increase the percentage of prior approved EHH services actually delivered. Such reduction in the amount of services that have been prior approved is contrary to federal Medicaid law and would constitute a due process violation under the United States Constitution.

Settlement Implementation

Implementation of the settlement as it impacts operations by managed care organizations are discussed more fully below. These provisions become operative on **July 30, 2020**.

1. Crisis Response Team

Louisiana Medicaid has established a Crisis Response Team (CRT) whose primary responsibility is arranging for in-home nursing services for class members when such services are unavailable through existing Medicaid home health agencies within their LDH Region. The Crisis Response team is set to go online beginning July 30, 2020.

Support Coordinators or Case Managers have the obligation promptly to make referrals to the CRT for any class member who, after making reasonable efforts to receive EHH or IN services:

- Has received **less than 90%** of his or her prior approved EHH or medically necessary IN services for **at least two (2) consecutive weeks**; or
- Has been unable to locate a home health provider in his or her LDH Region or has been denied enrollment by all home health providers in his or her LDH Region; or
- Is otherwise facing a serious risk of institutionalization due to lack of EHH or IN services.

In addition, when a need for IN has been identified and a class member is being terminated from existing EHH services where the class member's LDH Region does not have a provider for IN services on the date that the notice of denial has been sent, the class member must be immediately referred to the CRT. In such situations, a reasonable includes a reevaluation of whether or not the class member should have been found eligible for EHH services.

The CRT operates in addition to, and does not replace, the responsibilities of a class member's existing support coordinator or case manager.

2. Class Member Denial Notices

Denial notices to class members denying EHH services must contain contact information to the CRT when there is an identified need for IN services, i.e. for in-home skilled nursing services of visits with a duration shorter than three (3) contiguous hours per day.

Contact information for the CRT will be published on the Department's website and is as follows:

Email: crisisresponseteam@la.gov

Telephone: (866) 729- 0017

Additionally, in situations when a class member is being referred to the CRT due to the unavailability of a provider for IN services concurrent with a termination from existing EHH services, the notice of denial to the class member of the EHH services termination must also notify the class member of the referral to the CRT.

3. Case Management

Support coordinators or case managers must document in the progress notes for each class member all prior approved EHH or medically necessary IN services and whether those EHH or IN services are provided, as reported by the family, including whether the family refused has offered services and, if so, the basis for the refusal.

4. Additional Rate Modifiers

Louisiana Medicaid has published an updated Home Health Fee Schedule that includes modifiers with enhanced rates for situations in which two recipients are cared for simultaneously, for children in EHH with high medical needs, for overnight shifts for EHH, for weekend shift for EHH, for holiday shifts for EHH, and for EHH services in rural areas. This updated Home Health Fee Schedule can be found at https://www.lamedicaid.com/provweb1/fee_schedules/HH_Fee.htm. These rate modifiers are active and may be used in applicable circumstances to provide an enhanced reimbursement rate to home health providers in order to facilitate fully staffing prior approved EHH services for class members.

Termination

The settlement period for *AJ v. LDH* is scheduled to terminate after five (5) years on March 31, 2025, unless otherwise ordered by the court.