



State of Louisiana
Louisiana Department of Health
Office of the Secretary

To: **The Honorable John Bel Edwards, Governor, State of Louisiana (Via Email)**
The Honorable Jeff Landry, Attorney General, Louisiana Department of Justice (apa.submission@ag.louisiana.gov)
The Honorable Patrick Page Cortez, President, Louisiana Senate (apa.senatepresident@legis.la.gov)
The Honorable Clay Schexnayder, Speaker, Louisiana House of Representatives (apa.housespeaker@legis.la.gov)
Catherine Brindley, Editor, Louisiana Register (reg.submission@la.gov)
Senate Health and Welfare Committee (apa.s-h&w@legis.la.gov)
House Health and Welfare Committee (apa.h-hw@legis.la.gov)

From: **Dr. Courtney N. Phillips, Secretary, Louisiana Department of Health**

A handwritten signature in cursive script, appearing to read "Courtney N. Phillips".

Date: **February 4, 2022**

Re: **Justification of Promulgation of Emergency Rule
Pharmacy Benefits Management Program – Over-the-Counter At-Home
COVID-19 Tests, LAC 50:XXIX.107**

MEMORANDUM

In accordance with the Administrative Procedure Act (La. R.S. 40:950 *et seq.*) as amended, the Louisiana Department of Health is submitting the following emergency rule that amends Pharmacy Benefits Management Program – Over-the-Counter At-Home COVID-19 Tests, LAC 50:XXIX.107.

Should you have any questions or require additional information regarding this matter, please do not hesitate to contact Patrick Gillies, at Patrick.Gillies@la.gov.

Attachments: Emergency Rule – Pharmacy Benefits Management Program – Over-the-Counter At-Home COVID-19 Tests, LAC 50:XXIX.107

Cc: **Patrick Gillies, Medicaid Director, LDH**
Kelly Zimmerman, Interim Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Allen Enger, Rulemaking Coordinator, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Louisiana Register Editor, Office of the State Register

DECLARATION OF EMERGENCY

Department of Health
Bureau of Health Services Financing

Pharmacy Benefits Management Program
Over-the-Counter At-Home COVID-19 Tests
(LAC 50:XXIX.107)

The Department of Health, Bureau of Health Services Financing amends LAC 50:XXIX.107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.1 et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) requires states to provide reimbursement in the Medical Assistance Program for over-the-counter (OTC) at-home tests for Coronavirus Disease 2019 (COVID-19) that have been authorized by the Food and Drug Administration (FDA). In compliance with CMS requirements, the Department of Health, Bureau of Health Services Financing hereby amends the provisions governing the Pharmacy Benefits Management Program in order to include coverage for FDA-authorized OTC at-home tests for COVID-19.

It is anticipated that this Emergency Rule will result in programmatic costs in the Medicaid Program of approximately \$34,123 for State Fiscal Year 2021-2022. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring access to COVID-19 tests.

Effective February 4, 2022, the Department of Health, Bureau of Health Services Financing amends the provisions governing the Pharmacy Benefits Management Program in order to provide coverage for OTC at-home COVID-19 tests.

Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part XXIX. Pharmacy

Chapter 1. General Provisions

§107. Prior Authorization

A. - C.3. ...

D. Drugs Excluded from Coverage. As provided by §1927(d)(2) of the Social Security Act, the following drugs are excluded from program coverage:

1. - 4.0. ...

5. select nonprescription drugs except OTC antihistamines and antihistamine/decongestant combinations and polyethylene glycol 3350 (Miralax®) and OTC at-home COVID-19 FDA-authorized tests;

E. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and the 1995-96 General Appropriations Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1053 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1180 (June 2017), LR 43:1553 (August 2017), amended LR 45:665 (May 2019), LR 46:33 (January 2020), LR 48:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Mr. Gillies is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Dr. Courtney N. Phillips

Secretary

All C.G.
2/4/22