



# 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, LDH

**Date:** May 10, 2023

**Re:** Justification of Promulgation of Emergency Rule  
Personal Care Services-Long Term and Home and Community-Based Services  
Waivers (LAC 50.XV.Subpart 9 and XXI. Subparts 3 and 7)

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## MEMORANDUM

In accordance with the Administrative Procedure Act (La. R.S. 49:950 *et seq.*) as amended, the Louisiana Department of Health is submitting the following emergency rule that amends Personal Care Services-Long Term and Home and Community-Based Services Waivers (LAC 50:XV.Subpart 9 and XXI. Subparts 3 and 7).

Should you have any questions or require additional information regarding this matter, please do not hesitate to contact Layne Janet, at [layne.janet@la.gov](mailto:layne.janet@la.gov).

Attachments: Emergency Rule – Personal Care Services-Long Term and Home and Community-Based Services Waivers (LAC 50:XV.Subpart 9 and XXI. Subparts 3 and 7)

**Cc:** Tara LeBlanc, Medicaid Director, LDH  
Melinda Richard, OAAS Assistant Secretary, LDH  
Kirsten Clebert, OAAS Division Director, LDH  
Brian Bennett, Medicaid Program Manager, LDH  
Veronica Dent, Medicaid Manager, 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  
and  
Office of Aging and Adult Services**

**Personal Care Services—Long Term and Home and Community-Based  
Services Waivers**

**(LAC 50:XV.Subpart 9 and XXI.Subparts 3 and 7)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XV.Subpart 9 and XXI.Subparts 3 and 7 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated Emergency Rules which relaxed the provisions governing long term-personal care services (LT-PCS) and certain home and community-based services (HCBS) waivers throughout the duration of the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) (*Louisiana Register*, Volume 46, Numbers 4 and 9). The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) permits states to temporarily extend these services beyond the May 11, 2023 COVID-19 PHE end date. As such, the department hereby amends the provisions of LAC 50:XV.Subpart 9 and LAC 50:XXI.Subparts 3 and 7 governing these services in order to align with the CMS extension dates.

This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:962, and shall be in effect for the maximum period allowed under the Act or until end of the temporary service extension granted by CMS, whichever occurs first.

This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring that these LT-PCS and HCBS waiver flexibilities continue beyond the May 11, 2023 COVID-19 PHE end date. It is anticipated that implementation of this Emergency Rule will have no fiscal impact for state fiscal year 2022-2023.

Effective May 12, 2023, the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XV.Subpart 9 and XXI.Subparts 3 and 7 in order to align the provisions governing LT-PCS services and certain HCBS waivers with the CMS extension dates for these services.

**Title 50**  
**PUBLIC HEALTH-MEDICAL ASSISTANCE**  
**Part XV. Services for Special Populations**  
**Subpart 9. Personal Care Services**

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions governing long term-personal care services (LT-PCS) are relaxed until September 30, 2023:

Recipients of long term-personal care services (LT-

PCS) may receive more weekly service hours than what is assigned for his/her level of support category;

Recipients may receive LT-PCS in another state without prior approval of OAAS or its designee;

Recipients may receive LT-PCS while living in a home or property owned, operated or controlled by a provider of services who is not related by blood or marriage to the recipient;

The following individuals may provide services to the recipient of LT-PCS: the recipient's curator; the recipient's tutor; the recipient's legal guardian; the recipient's responsible representative; or the person to whom the recipient has given representative and mandate authority (also known as power of attorney);

The state may allow exceptions to the requirements that services must be provided in accordance with the approved plan of care and/or supporting documentation; and

The state may allow exceptions to LT-PCS prior authorization requirements.

The following option may be available through LT-PCS through November 11, 2023:

The state may modify the minimum age requirement for direct care workers.

**Part XXI. Home and Community-Based Services Waivers**  
**Subpart 3. Adult Day Health Care Waiver**

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the Adult Day Health Care (ADHC) Waiver are relaxed until September 30, 2023:

Adult Day Health Care Waiver participants are allowed to receive ADHC services in his/her home by licensed and/or certified ADHC staff (i.e. RN, LPN, PCA and/or CNA);

The current assessments/re-assessments remain in effect past the annual (12 month) requirement;

Participants are not discharged if services are interrupted for a period of 30 consecutive days as a result of not receiving or refusing ADHC services until;

Participants are not discharged for failure to attend the ADHC center for a minimum of 36 days per calendar quarter;

The state may allow exceptions to prior authorization requirements; and

The state may allow exceptions to the requirements that services must be provided in accordance with the approved plan of care and/or supporting documentation.

The following options may be available through the ADHC Waiver until November 11, 2023:

The state may allow ADHC providers to provide services telephonically to waiver participants that cannot attend the ADHC center to ensure continuity of services.

The state is adding the following services in the ADHC Waiver:

Home Delivered Meals. The purpose of home delivered meals is to assist in meeting the nutritional needs of an individual in support of the maintenance of self-sufficiency and enhancing the quality of life. Up to two nutritionally balanced meals per day may be delivered to the home of the participant. This service may be provided by the ADHC provider.

Assistive Devices and Medical Supplies. Assistive devices and medical supplies are specialized medical equipment and supplies that include:

Devices, controls, appliances or nutritional supplements specified in the Plan of Care that enable participants to increase their ability to perform activities of daily living (ADLs);

Devices, controls, appliances or nutritional supplements that enable participants to perceive, control or communicate with the environment in which they live or provide emergency response;

Items, supplies and services necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of such items;

Supplies and services to assure participants' health and welfare;

Other durable and non-durable medical equipment and necessary medical supplies that are necessary but not available under the Medicaid State Plan;

Personal Emergency Response Systems (PERS);

Other in-home monitoring and medication management devices and technology;

Routine maintenance or repair of specialized equipment; and

Batteries, extended warranties and service contracts that are cost effective and assure health and welfare.

This includes medical equipment not available under the Medicaid State Plan that is necessary to address participant functional limitations and necessary medical supplies not available under the Medicaid State Plan.

**Part XXI. Home and Community-Based Services Waivers**  
**Subpart 7. Community Choices Waiver**

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the Community Choices Waiver (CCW) are relaxed until September 30, 2023:

Community Choices Waiver (CCW) participants are allowed to receive personal assistance services (PAS) in another state without prior approval of OAAS or its designee;

Participants may receive PAS while living in a home or property owned, operated or controlled by a provider of services

who is not related by blood or marriage to the participant without prior approval of OAAS or its designee;

The current assessment/re-assessment remains in effect past the annual (12 month) requirement;

CCW participants are not discharged if services are interrupted for a period of 30 consecutive days as a result of not receiving and/or refusing services;

Participants are not discharged from CCW self-directed services for failure to receive those services for 90 days or more;

Participants may receive an increase in his/her annual services budget;

Participants may receive Adult Day Health Care (ADHC) services in his/her home by licensed and/or certified ADHC staff (i.e. RN, LPN, PCA and/or CNA);

The state may allow exceptions to the requirements that services must be provided in accordance with the approved plan of care and/or supporting documentation;

The state may allow exceptions to prior authorization requirements; and

The state may allow monitored in-home caregiving (MIHC) providers to monitor participants via frequent telephone contacts and/or telehealth.

The following options may be available through CCW through



November 11, 2023:

The following individuals may provide services to the participant: the participant's spouse; the participant's curator; the participant's tutor; the participant's legal guardian; the participant's responsible representative; or the person to whom the participant has given representative and mandate authority (also known as power of attorney).

The state may modify the minimum age requirement for direct care workers.

The state may allow ADHC providers to provide services telephonically to waiver participants that cannot attend the ADHC center to ensure continuity of services.

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.

Tara A. LeBlanc, Bureau of Health Services Financing, 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

*AKJ 5/10/23*