




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: Stephen R. Russo, JD, Secretary, LDH 

Date: November 9, 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)

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.

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: Kimberly Sullivan, Interim 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 promulgated an Emergency Rule which amended 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 (*Louisiana Register*, Volume 49, Number 5).

This Emergency Rule amends the May 12, 2023 Emergency Rule in order to continue provisions and/or options under the Adult Day Health Care Waiver beyond the original extension date.

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 the end of the temporary service extension granted by CMS or adoption of the final Rule, 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.

Effective November 9, 2023, the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the May 12, 2023 Emergency Rule which extended LT-PCS and certain HCBS waiver flexibilities beyond the COVID-19 PHE end date in order to continue provisions and/or options under the Adult Day Health Care Waiver.

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

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 and/or options under the Adult Day Health Care (ADHC) Waiver are available through April 30, 2024:

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

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

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.

Kimberly Sullivan, JD, 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.

Stephen R. Russo, JD

Secretary

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