

DECLARATION OF EMERGENCY

**Department of Health
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities**

**Targeted Case Management and Home and Community-Based Services
Waivers**

(LAC 50:XV.Subpart 7 and XXI.Subparts 5, 9, 11, and 13)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XV.Subpart 7 and XXI.Subparts 5, 9, 11, and 13 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 for Citizens with Developmental Disabilities promulgated Emergency Rules which made allowances for early and periodic screening, diagnosis and treatment (EPSDT) targeted case management (TCM) services and relaxed provisions governing 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, 11, and 12). 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 7 and LAC 50:XXI.Subparts 5, 9, 11 and 13 governing these services in order to align with the CMS extension dates (*Louisiana Register*, Volume 49, Number 5).

This Emergency Rule is being promulgated to continue the provisions of the May 12, 2023 Emergency Rule, 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.

Effective November 9, 2023, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities continue the provisions of the May 12, 2023 Emergency Rule which amended LAC 50:XV.Subpart 7 and XXI.Subparts 5, 9, 11, and 13 in order to align the provisions governing EPSDT TCM 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 7. Targeted Case Management

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the state makes the following allowances for early and periodic screening, diagnostic and treatment targeted case management services until November 11, 2023:

Case managers may utilize telephone contacts (i.e., video or voice calls) in place of any required face-to-face contacts; and

Case managers may complete initial assessments, quarterly reassessments, and annual reassessments without signatures from recipients.

Part XXI. Home and Community-Based Services Waivers
Subpart 5. Supports Waiver

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the Supports Waiver are relaxed until November 11, 2023:

Allow up to a total of 20 hours a week of respite services and or habilitation services in lieu of day habilitation or vocational services for these programs that have been closed;

Allow participants and direct support workers (DSWs) to live in the same setting so that the recipient may receive necessary respite and habilitation services;

Allow legally responsible relatives to be temporary respite or habilitation direct support, if necessary, in the absence of DSW care;

Documentation of services rendered is required and will be verified by the support coordination agency;

Allow quarterly visits to be conducted via phone contact, FaceTime, or skype;

Monthly phone contacts will still occur;

Allow support coordinators to substitute phone contact, FaceTime on computers, or Skype, in lieu of home visits for individuals at risk of exposure who are medically fragile, elderly, both or who have medically fragile caregivers;

Allow assessments to be conducted via FaceTime, Skype, or phone call to avoid delay in services;

Allow the comprehensive plan of care by the support coordinator to be conducted via FaceTime, Skype, or by phone to avoid a delay in services; and

Allow the home certification visit by the Office for Citizens with Developmental Disabilities (OCDD) or its designee to be conducted via FaceTime, Skype, or phone call to avoid a delay in services.

LDH retains the right to recoup all or a portion of retainer payments from providers who furlough or lay off staff or fail to reopen.

LDH may review cost reports and other documentation of expenses in making this determination.

Subpart 9. Children's Choice Waiver

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the Children's Choice Waiver are relaxed until November 11, 2023:

Allow expansion of the current Children's Choice Waiver cap to allow for an additional 20 hours per week of family support services as needed for health and safety due to school closures;

Allow participants and family support (FS) direct support workers (DSWs) to live in the same setting so that the participant may continue to receive services;

Allow legally responsible relatives to be temporary FS DSWs during the declared emergency, if necessary, in the absence of DSW care;

Documentation of services rendered is required and will be verified by the support coordination agency;

Reduce the minimum age of DSWs to 16 years of age, if necessary, in an emergency. Emergency being defined as no other staff or supports available;

Remove the requirement for DSWs to have a high school diploma or equivalent;

Allow quarterly visits to be conducted via phone contact versus face-to-face contact;

Monthly phone contacts will still occur;

Allow support coordinators to substitute phone contact, FaceTime on computers, or Skype in lieu of home visits for individuals at risk of exposure who are medically fragile, elderly, both, or who have medically fragile caregivers;

Allow assessments to be conducted via FaceTime, Skype, or phone call to avoid delay in services;

Allow the comprehensive plan of care by the support coordinator to be conducted via FaceTime, Skype, or phone to avoid a delay in services; and

Allow the home certification visit by the Office for Citizens with Developmental Disabilities (OCDD) or its designee to be conducted via FaceTime, Skype, or phone to avoid a delay in services.

Subpart 11. New Opportunities Waiver

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the New Opportunities Waiver are relaxed until November 11, 2023:

Allow conversion of day habilitation and vocational service program hours to individual and family support (IFS) for participants whose day habilitation and/or vocational programs have closed;

Allow participants and individual and family support (IFS) direct support workers (DSWs) to live in the same setting so that the participant may continue to receive services;

Allow legally responsible relatives to be temporary IFS DSWs during the declared emergency, if necessary, in the absence of DSW care;

Documentation of services rendered is required and will be verified by the support coordination agency;

Reduce the minimum age of DSWs to 16 years of age, if necessary, in an emergency. Emergency being defined as no other staff or supports available;

Remove the requirement for DSWs to have a high school diploma or equivalent;

Allow quarterly visits to be conducted via phone contact versus face-to-face contact;

Monthly phone contacts will still occur.

Allow the home certification visit by the Office for Citizens with Developmental Disabilities (OCDD) or its designee to be conducted via FaceTime, Skype, or phone to avoid a delay in services.

LDH retains the right to recoup all or a portion of retainer payments from providers who furlough or lay off staff or fail to reopen. LDH may review cost reports and other documentation of expenses in making this determination.

Subpart 13. Residential Options Waiver

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the Residential Options Waiver are relaxed until November 11, 2023:

Allow sharing of direct support staff when necessary;

Allow conversion of day habilitation and vocational services to community living supports (CLS) for participants whose day habilitation and or vocational program have been closed;

Allow participants and community living support (CLS) direct support workers (DSWs) to live in the same setting so that the participant may continue to receive services;

Documentation of services rendered is required and will be verified by the support coordination agency;

Allow legally responsible relatives to be temporary community living support (CLS) DSWs during the declared emergency if necessary in the absence of DSW care;

Reduce the minimum age of DSWs to 16 years of age, if necessary, in an emergency. Emergency being defined as no other staff or supports available;

Remove the requirement for DSWs to have a high school diploma or equivalent;

Allow quarterly visits to be conducted via phone contact versus face-to-face contact;

Monthly phone contacts will still occur;

Allow support coordinators to substitute phone contact, FaceTime on computers, or Skype in lieu of home visits for individuals at risk of exposure who are medically fragile, elderly, or both or who have medically fragile caregivers;

Allow assessments to be conducted via FaceTime, Skype, or phone call to avoid a delay in services;

Allow the comprehensive plan of care by the support coordinator to be conducted via FaceTime, Skype, or by phone to avoid a delay in services;

Allow the home certification visit by the Office for Citizens with Developmental Disabilities (OCDD) or its designee to be conducted via FaceTime, Skype, or phone to avoid delay in services; and

If a provider had not already received revenues in excess of the pre-public health emergency level but receipt of the retainer payment in addition to those prior sources of funding results in the provider exceeding the pre-public health emergency level, any retainer payment amounts in excess may be recouped.

LDH retains the right to recoup all or a portion of retainer payments from providers who furlough or lay off staff or fail to reopen. LDH may review cost reports and other documentation of expenses in making this determination.

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