

John Bel Edwards
GOVERNOR



Stephen R. Russo, JD
SECRETARY

State of Louisiana

Louisiana Department of Health
Bureau of Health Services Financing

VIA ELECTRONIC MAIL ONLY

June 21, 2023

James G. Scott, Director
Division of Program Operations
Medicaid & CHIP Operations Group
601 East 12th Street, Room 0300
Kansas City, Missouri 64106-2898

**RE: LA Medicaid Disaster Relief SPA TN 23-0001 RAI Response
Home and Community-Based Services Spending Plan**

Dear Mr. Scott:

Please refer to our proposed amendment to the Medicaid State Plan submitted under transmittal number (TN) 23-0001 with a proposed effective date of April 1, 2021. This amendment seeks approval to increase bonus payments to personal care services and targeted case management providers in order to address the COVID-19 Public Health Emergency (PHE) and in accordance with the State's approved Home and Community Based Services spending plan authorized under Section 9817 of the American Rescue Plan Act.

We are providing the following in response to your request for additional information (RAI) dated April 5, 2023:

Section E – Payments:

1. LA 23-0001 replaces “direct support worker” with “case manager”. Please confirm that the revised SPA language is synonymous with the original approved language in terms of eligible payees. Will ANY payee that is eligible to receive payment under approved LA 22-0015 (direct support workers) lose the opportunity to receive payment with changes that are being made with LA 23-0001 (case managers)?

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LDH RESPONSE:

The type of providers/workers targeted for payments under 22-0015 did not change under 23-0001. Both direct support workers and case managers will continue to be eligible for bonus payments under 23-0001 if they are still providing services to HCBS beneficiaries. The bonus payments proposed in this SPA and included in the State's ARP Section 9817 Home and Community Based Services (HCBS) Spending Plan are intended to strengthen the direct service workforce. As such, and no different from LA SPA TN 22-0015, payments will only be made to those workers and case managers currently providing services to HCBS beneficiaries. No workers will lose the opportunity to receive a payment if they return to the HCBS workforce.

2. LA 22-0015 increased payment rates for direct support workforce and support coordination recruitment and retention program. LA 23-0001 proposes to increase payment rates for personal care services and Early and Periodic Screening, Diagnostic and Treatment (EPSDT) targeted case management in the New Opportunities Wavier (NOW). Will ANY payee that is eligible to receive payment under approved LA 22-0015 lose the opportunity to receive payment with changes that are being made with LA 23-0001?

LDH RESPONSE:

Both direct support workers and case managers will continue to be eligible for bonus payments under 23-0001 if they are still providing services to HCBS beneficiaries. No workers will lose the opportunity to receive a payment if they return to the workforce.

Additionally, under 22-0015 both retrospective and prospective bonus payments were planned, while under the proposed 23-0001 only retrospective payments will be made for the period April 2021- through October 2022.

3. Please confirm that the changes to these payment rates above do not impact the state's Maintenance of Effort for home and community-based services under §9817 of the American Rescue Plan Act (ARP)?

LDH RESPONSE:

The State attests that the changes included in the proposed SPA comport with Maintenance of Effort (MOE) requirements. The State has included this activity (supplemental payments to HCBS providers) in its Section 9817 ARP HCBS Spending Plan and intends to use federal funds attributable to the increased FMAP to fund this activity. The State attests that these funds will supplement, not supplant, existing state funds expended for Medicaid HCBS in effect as of April 1, 2021 as required in SMD# 21-003.

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4. Louisiana public notice was not submitted until December 20, 2022. The regulation at 42 CFR 447.205 would limit the earliest effective date for terminating the \$150 per month payment to the end of the day December 19, 2022. LA 23-0001, which implicitly includes the rescission of LA 22-0015 was submitted and received on January 6, 2023. While the payment enhancement of \$300 per month can be submitted under 1135 waiver options and receive an earlier effective date, the rescission of the LA 22-0015 approved \$150 payment cannot be effective earlier than January 1, 2023 under regulations at 42 CFR 430.20.
 - a. Please provide additional evidence that SPA submission requirements to rescind the \$150 per month payment amount were met in accordance with 42 CFR 447.205 and 42 CFR 430.20.

LDH RESPONSE:

The State respectfully requests any workaround that may be available for these regulations. After approval of 22-0015, the State met with the Department of Labor (DoL) and they indicated that payments made for dates of service beyond October 2022 would be subject to overtime requirements under the Fair Labor Standards Act (FLSA). Notice of state rulemaking occurred in October 2022 and, according to DoL, any payments made for dates of service after this date would be considered non-discretionary and thus subject to overtime requirements. This would place additional financial burden on HCBS providers by having to pay out overtime on these payments (as applicable) and would also be very administratively burdensome and complex to operationalize which would potentially place providers at risk of failing to comply with the FLSA.

Please provide an analysis of the aggregate difference in payments (total computable) approved under LA 22-0015 and those proposed by LA-23-0001

LDH RESPONSE:

The State provided a revised CMS-179 and fiscal worksheet on March 15, 2023 as part of the IRAI response packet. SPA 22-0015 proposed that eligible workers may receive a payment for months worked from the April 1, 2021 through March 31, 2025 or the end of the PHE, if earlier. SPA 23-0001 limited this time period to the months of April 2021 through October 2022. However, the State increased the amount paid each month from \$150 to \$300 to offset the shortened time

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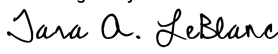
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period. The State has not made any payments under 22-0015. Any payments made beyond October 2022 will have to comply with the Department of Labor's overtime requirements.

Please consider this as a formal request to begin the 90-day clock. As always, we appreciate the assistance and guidance CMS has provided in resolving these issues. We trust this RAI response will result in the approval of the pending SPA. If additional information is required, you may contact Karen H. Barnes via email at Karen.Barnes@la.gov or by phone at (225) 342-3881.

Sincerely,

DocuSigned by:

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Tara A. LeBlanc
Medicaid Executive Director

TAL:KHB:MJ