ENROLLED

2020 Second Extraordinary Session

HOUSE CONCURRENT RESOLUTION NO. 29

BY REPRESENTATIVES BUTLER, BAGLEY, ADAMS, AMEDEE, BOURRIAQUE, BRASS, CARRIER, GARY CARTER, COUSSAN, COX, DEVILLIER, DESHOTEL, ECHOLS, EDMONDS, EDMONSTON, FIRMENT, FONTENOT, FREEMAN, FREIBERG, GADBERRY, GAROFALO, GREEN, HORTON, HUGHES, JEFFERSON, JENKINS, JONES, MCKNIGHT, MOORE, NEWELL, PRESSLY, RISER, ROMERO, SCHEXNAYDER, THOMAS, THOMPSON, VILLIO, WHITE, AND WILLARD AND SENATORS ABRAHAM, BARROW, BERNARD, BOUDREAUX, BOUIE, CARTER, CATHEY, CLOUD, CONNICK, CORTEZ, FESI, FIELDS, FOIL, HARRIS, HENSGENS, HEWITT, JACKSON, JOHNS, LUNEAU, MCMATH, FRED MILLS, ROBERT MILLS, MIZELL, MORRIS, PEACOCK, POPE, REESE, SMITH, TALBOT, TARVER, WARD, AND WOMACK

A CONCURRENT RESOLUTION

To amend the Louisiana Department of Health rule, LAC 50:VII.33103(A)(2), which provides for leaves of absence for residents of intermediate care facilities for persons with intellectual and developmental disabilities, to provide for retroactive and prospective application of the amendments, and to direct the office of the state register to print the amendments in the Louisiana Administrative Code.

WHEREAS, intermediate care facilities for persons with intellectual and developmental disabilities, known commonly as ICF/DD and ICF/ID, are residential facilities at which children and adults with special needs receive individualized health care and habilitation services; and

WHEREAS, these facilities are regulated under the provisions of Part VI-E of Chapter 11 of Title 40 of the Louisiana Revised Statutes of 1950 (R.S. 40:2180 et seq.) and Subpart 3 of Part VII of the Louisiana Administrative Code (LAC 50:VII.30101 et seq.); and

WHEREAS, state regulations concerning Medicaid funding of ICF/ID care, which provide for a system of per diem payments to these facilities, prohibit the state Medicaid program, with limited exceptions, from covering more than forty-five leave of absence days for any ICF/ID resident in any state fiscal year (July 1 through June 30); and

WHEREAS, the effect of these regulations is to make families liable for paying the per diem to the ICF/ID for their loved ones' leaves of absence for the number of days exceeding forty-five days in total in a state fiscal year; and

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WHEREAS, during Louisiana's state of public health emergency that was first declared on March 11, 2020, in response to the COVID-19 pandemic, and which continues as of the date of filing of this Resolution, many families have chosen to provide care for extended periods in their own homes for their loved ones who are ICF/ID clients; and

WHEREAS, in these most challenging of times, these families have made difficult decisions and great sacrifices to protect the best interests of their most fragile family members who cannot care for themselves; and

WHEREAS, many of these families now face financial hardship because their loved ones have exceeded the number of Medicaid-covered ICF/ID leave of absence days allowed by state regulations; and

WHEREAS, the provisions of R.S. 49:969 authorize the legislature, by concurrent resolution, to suspend, amend, or repeal any rule or regulation adopted by a state department, agency, board, or commission.

THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that LAC 50:VII.33103(A)(2) is hereby amended to read as follows:

§33103. Payment Limitations

A. Temporary Absence of the Client. A client's temporary absence from an ICF/ID will not interrupt the monthly vendor payment to the ICF/ID, provided the following conditions are met:

* * *

2. the absence is for one of the following reasons:

a. hospitalization, which does not exceed seven days per hospitalization; or

b. leave of absence. A temporary stay outside the ICF/ID provided for in the client's written individual habilitation plan. A leave of absence will not exceed 45 days per fiscal year (July 1 through June 30) and will not exceed 30 consecutive days in any single occurrence. Certain leaves of absence will be excluded from the annual 45-day limit as long as the leave does not exceed the 30-consecutive day limit and is included in the written individual habilitation plan. These exceptions are as follows:

i. Special Olympics;

ii. roadrunner-sponsored events;

iii. Louisiana planned conferences;

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iv. trial discharge leave;

v. official state holidays; and

vi. two days for bereavement of close family members.

(a). Close Family Members—parent, step-parent, child, step-child, brother, step-brother, sister, step-sister, spouse, mother-in-law, father-in-law, grand-parent, or grandchild.

c. The following leaves of absence will be excluded from both the annual 45-day limit and the 30-consecutive day limit as long as the leave of absence is included in the written habilitation plan:

i. any leave of absence during a declared federal public emergency by the Department of Health and Human Services.

* * *

BE IT FURTHER RESOLVED that the provisions of this Resolution shall be given prospective and retroactive application and shall be applied retroactively to March 11, 2020.

BE IT FURTHER RESOLVED that the provisions of this Resolution shall not be implemented unless approved by the Centers for Medicare and Medicaid Services.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the office of the state register and the secretary of the Louisiana Department of Health.

BE IT FURTHER RESOLVED that the office of the state register is hereby directed to have the amendments to LAC 50:VII.33103(A)(2) printed and incorporated into the Louisiana Administrative Code.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

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