John Bel Edwards
GOVERNOR

Stephen R. Russo JD
INTERIM SECRETARY

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 (Via Email)
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, Interim Secretary, Louisiana Department of Health**

Date: **March 19, 2020** Cindy Rives

Re: **Justification of Promulgation of Emergency Rule**
Amendments to Programs and Services Due to the Coronavirus Disease 2019 (COVID-19) Statewide Public Health Emergency

MEMORANDUM

In accordance with the Administrative Procedure Act (La. R.S. 40:950 *et seq.*) as amended, the Louisiana Department of Health is submitting the following emergency rule that amends Programs and Services Due to the Coronavirus Disease 2019 (COVID-19) Statewide Public Health Emergency.

Should you have any questions or require additional information regarding this matter, please do not hesitate to contact Jennifer Katzman, at Jennifer.Katzman@la.gov or (225) 342-5166.

Attachments: Emergency Rule – Amendments to Programs and Services Due to the Coronavirus Disease 2019 (COVID-19) Statewide Public Health Emergency

Cc: Jennifer Katzman, Medicaid Deputy Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Anita Dupuy, Legislative Liaison, LDH
Allen Enger, Rulemaking Coordinator, 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
and
Office of Behavioral Health

Amendments to Programs and Services Due to the Coronavirus Disease 2019 (COVID-19) Statewide Public Health Emergency

On January 30, 2020, the World Health Organization declared a public health emergency of international concern and on January 31, 2020, U.S. Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States in response to the recent coronavirus disease 2019 (hereafter referred to as COVID-19) outbreak. On March 11, 2020, Governor John Bel Edwards declared a statewide public health emergency to exist in the State of Louisiana as a result of the imminent threat posed to Louisiana citizens by COVID-19. Likewise, the presidential declaration of the public health emergency related to COVID-19 has an effective date of March 1, 2020.

In response to these public health emergency declarations and the rapid advancement of COVID-19 throughout Louisiana, the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services (OAAS), and the Office of Behavioral Health (OBH) hereby amend the provisions of *Title 50 of the Louisiana Administrative Code* in order to adopt temporary

measures to provide for the continuation of essential programs and services to ensure the health and welfare of the citizens of Louisiana in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. This Emergency Rule shall be in effect for the maximum period allowed under the Act or the duration of the COVID-19 statewide public health emergency declaration, whichever comes first.

The Department amends *Title 50 of the Louisiana Administrative Code* to enact the following provisions throughout the duration of the COVID-19 presidential public health emergency declaration:

Nursing Facilities - Reimbursement Methodology - Reimbursement Adjustment (LAC 50:II.20006)

The per diem rate paid to non-state nursing facilities shall contain an add-on of $12 for the period of the presidential COVID-19 declaration.

Nursing Facilities - Reimbursement Methodology - Leave of Absence Days (LAC 50:II.20021)

For each Medicaid recipient, nursing facilities shall be reimbursed for up to seven hospital leave of absence days per occurrence and 15 home leave of absence days per calendar year.

For dates of service during the presidential COVID-19 declaration, the state may allow the reimbursement paid

for leave of absence days to be equal to 100 percent of the applicable per diem rate.

Intermediate Care Facilities for Persons with Intellectual Disabilities - Emergency Awareness - Payment Limitations (LAC 50:VII.33101)

For dates of service during the presidential COVID-19 declaration, the state may waive the annual 45 day limit on the client's leave of absence, the limitation of 30 consecutive days, and the inclusion of the leave in the written individual habilitation plan for recipients that return to the facility for at least 24 hours prior to any discharge/transfer.

Payments to providers for these days will not include any enhanced rate add-ons (i.e., Complex Care, Pervasive Plus), and providers will appropriately submit them as leave days when billing for payment.

Services for Special Populations - Personal Care Services (LAC 50:XV.Subpart 9)

Relaxation of long term-personal care services (LT-PCS) provisions during the presidential COVID-19 declaration:

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;

The state may increase the maximum number of LT-PCS hours received per week;

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;

Individuals may concurrently serve as a responsible representative for more than two recipients without an exception from OAAS;

The following individuals may provide services to the recipient of LT-PCS: the recipient's spouse; 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;

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

The state may increase and/or modify reimbursement rates for LT-PCS;

Recipients may orally designate/authorize or make changes to the responsible representative during the emergency.

However, once the emergency declaration is over, the recipient must submit a written designation on the appropriate OAAS form to designate a responsible representative;

The state may offer recipients the freedom to choose another LT-PCS provider if the designated provider is not able to provide services;

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

The state may allow exceptions to the requirement that the place(s) of service must be documented in the plan of care.

Home and Community-Based Services Waivers - Adult Day Health Care Waiver (LAC 50:XXI.Subpart 3)

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 during the presidential COVID-19 declaration:

Adult Day Health Care (ADHC) 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;

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

The state may elect to make retainer payments to ADHC providers when the ADHC center is closed;

Individuals may concurrently serve as a responsible representative for more than two participants without an exception from OAAS;

The state may allow exceptions to prior authorization requirements;

The state may increase and/or modify reimbursement rates for ADHC providers; 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.

Home and Community-Based Services Waivers - Community Choices Waiver (LAC 50:XXI.Subpart 7)

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the Community Choices Waiver (CCW) are relaxed during the presidential COVID-19 declaration:

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;

Individuals may concurrently serve as a responsible representative for more than two participants without an exception from OAAS;

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

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);

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 elect to make retainer payments to ADHC providers when the ADHC center is closed;

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;

Participants may receive more than two home delivered meals per day;

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

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

The state may increase and/or modify reimbursement rates for CCW providers.

Behavioral Health Services - Home and Community-Based Services Waiver (LAC 50:XXXIII.Subpart 9)

With approval from the Centers for Medicare and Medicaid Services (CMS) as applicable, the following provisions of the Coordinated System of Care (CSoC) Waiver are relaxed during the

presidential COVID-19 declaration:

Coordinated System of Care (CSoC) Waiver participants are allowed to receive CSoC waiver services in another state;

The current level of care evaluation/re-evaluation remains in effect beyond the semi-annual requirement;

CSoC participants are not discharged for failing to receive a face-to-face visit from the wraparound facilitator for 60 consecutive calendar days or more;

Services may be provided telephonically or through videoconferencing means in accordance with LDH-issued guidance;

Providers and wraparound facilitators are required to document all service activities in accordance with guidance issued by LDH and the CSoC contractor; and

Plan of care reviews and timelines may be extended.

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.

Interested persons may submit written comments to Erin Campbell, Bureau of Health Services Financing, P.O. Box 91030,

Baton Rouge, LA 70821-9030. Ms. Campbell 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

Interim Secretary

3/19/20