

PROVIDERALERT



To: AmeriHealth Caritas Louisiana Providers

Date: October 11, 2021

Subject: Pending Lawsuit: *A.A. et al. v. Dr. Courtney N. Phillips*

Summary: Attached are details of the class action lawsuit pending against the Louisiana Department of Health (LDH) in federal court.

There is a class action lawsuit pending against LDH in federal court at the Middle District of Louisiana bearing the caption *A.A. et al. v. Dr. Courtney N. Phillips et al.*, 3:19-cv-00770-BAJ-SDJ.

On May 25, 2021, the Court granted the Plaintiffs' request for class certification. Subsequently, in a July 14, 2021 Court Order, the district court required LDH to notify AmeriHealth Caritas Louisiana of the class certification.

A copy of the LDH Notice to AmeriHealth Caritas Louisiana is attached hereto as Attachment 1. In accordance with the LDH Notice, please find the Plaintiffs' Notice Form attached hereto as Attachment 2.

Please note that the Plaintiffs' Notice Form does not require any action on your part at this time.

Questions: Thank you for your continued support and commitment to the care of our members. If you have questions about this communication, please contact AmeriHealth Caritas Louisiana Provider Services at 1-888-922-0007 or your [Provider Network Management Account Executive](#).

Missed an alert?

You can find a complete listing of provider alerts on the [Provider Newsletters and Updates](#) page of our website.

Where can I find more information on COVID-19?

AmeriHealth Caritas Louisiana has updated its website to streamline communications and important notifications about COVID-19. Please visit <http://amerihealthcaritasla.com/covid-19> for up-to-date information for both providers and members, including frequently asked questions, and important provider alerts from AmeriHealth Caritas Louisiana and the Louisiana Department of Health.



State of Louisiana
Louisiana Department of Health
Bureau of Legal Services

September 24, 2021

VIA E-MAIL ONLY

Kyle Viator, CEO
AmeriHealth Caritas Louisiana
10000 Perkins Rowe, Block G, Suite 400
Baton Rouge, LA 70810
kviator@amerihealthcaritasla.com

RE: ACLA's Compliance with Class Notice Plan in *A.A. et al. v. Dr. Courtney N. Phillips et al.*, 3:19-cv-00770-BAJ-SDJ, United States District Court, Middle District of Louisiana.

Dear Kyle Viator:

There is a class action lawsuit pending against the Louisiana Department of Health (LDH) in federal court at the Middle District of Louisiana. Pursuant to Court Order, all Louisiana Medicaid managed care organizations must promulgate Plaintiffs' Class Action Notice to their network providers via a provider bulletin or similar alert mechanism by October 12, 2021, as explained below. A copy of the Plaintiffs' Class Action Notice is attached to this letter.

Summary of Class Action Lawsuit

This lawsuit was brought on behalf of a class of Medicaid eligible children ("the Plaintiffs") who need mental health services.¹ The named Plaintiffs in the lawsuit consist of six children residing in Louisiana, who are all Medicaid recipients with diagnosed mental illnesses or conditions. The Plaintiffs allege that LDH, as the State Medicaid Agency, fails to provide "intensive home and community-based services" ("IHCBS"), as required by federal law. Plaintiffs further assert that LDH's alleged failure to provide IHCBS causes children and young adults in the class to be at risk of unnecessary psychiatric hospitalizations and placement in psychiatric institutions. Through this lawsuit, Plaintiffs seek injunctive relief that orders LDH to provide IHCBS to correct or ameliorate the Plaintiffs' mental health conditions and prevent their institutionalizations.

¹ The class has been defined as "all Medicaid-eligible youth under the age of 21 in the State of Louisiana (1) who have been diagnosed with a mental health or behavioral disorder, not attributable to an intellectual or developmental disability, and (2) for whom a licensed practitioner of the healing arts has recommended intensive home- and community- based services to correct or ameliorate their disorders."

ACLA's Compliance with Class Notice Plan

September 24, 2021

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On May 25, 2021, the district court granted Plaintiffs' request for class certification. LDH has appealed the class certification order to the United States Court of Appeals for the Fifth Circuit. On September 20, 2021, the appellate court granted LDH's Petition for Permission to Appeal under Federal Rule of Civil Procedure 23(f). Therefore, the class certification appeal remains ongoing. The district court denied LDH's request for a stay of all proceedings pending the outcome of the class certification appeal. Therefore, the class action lawsuit is currently moving forward in district court

On July 14, 2021, the district court approved Plaintiffs' Class Action Notice Plan ("notice plan"). The notice plan, and subsequent General Order 2021-7 issued by Chief Judge Shelly D. Dick of the Middle District of Louisiana on September 2, 2021, requires LDH to notify AmeriHealth Caritas Louisiana ("ACLA") by September 27, 2021 of the class certification and ACLA's obligations under the notice plan. Accordingly, **pursuant to the Court Order issued on July 14, 2021 in the A.A. et al. v. Dr. Courtney N. Phillips et al. class action lawsuit, ACLA must promulgate Plaintiffs' Class Action Notice to its network providers via a provider bulletin or similar alert mechanism by October 12, 2021.**

On or before October 12, 2021, ACLA shall notify LDH's counsel, Kimberly Ulasiewicz Boudreaux, at Kimberly.Boudreaux@la.gov in writing via electronic mail once ACLA has promulgated Plaintiffs' Class Action Notice to its network providers. The written notification from ACLA shall additionally describe the method of dissemination. Should you have any questions or concerns, please contact me at Kimberly.Sullivan@la.gov.

Sincerely,

Kimberly Sullivan

Kimberly Sullivan
Deputy General Counsel
Louisiana Department of Health

cc: Patrick Gillies, Medicaid Executive Director
Michael Boutte, Medicaid Deputy Director, Program Operations and Compliance
Karen Stubbs, Assistant Secretary, Office of Behavioral Health
Suzanne Craig, scraig@amerihealthcaritas.com
Ashley Lukenheimer, alunkenheimer@amerihealthcaritas.com

The litigation may affect your rights. Please read carefully.

PURPOSE OF THIS NOTICE

This notice informs you about a class action lawsuit against the SECRETARY of the Louisiana Department of Health and the LOUISIANA DEPARTMENT OF HEALTH. You may be either a member of the class or a person who may be concerned with the interests of potential class members. Please read this entire notice.

BRIEF DESCRIPTION OF THE LAWSUIT

This class action suit seeks to improve the mental health services that are available and provided to children and youth under age 21 who are on Medicaid. The lawsuit, *A.A. et al. v. Phillips*, was filed in federal district court in the Middle District of Louisiana on November 7, 2019 (case number: 19-00770-BAJ-SDJ). The lawsuit alleges that the Louisiana Department of Health is violating the Medicaid Act by failing to make intensive home and community-based (mental health) services available to Medicaid recipients under age 21 with mental health conditions or disabilities. The lawsuit also alleges that the Louisiana Department of Health has violated the Americans with Disabilities Act and the Rehabilitation Act because the state has failed to provide intensive home and community-based services to Medicaid recipients under age 21 with mental health disabilities and that failure puts those recipients at risk of unnecessary institutionalization in hospitals and psychiatric facilities.

On May 25, 2021, Judge Brian A. Jackson certified this case as a class action lawsuit on behalf of “All Medicaid-eligible youth under the age of 21 in the State of Louisiana (1) who have been diagnosed with a mental health or behavioral disorder, not attributable to an intellectual or developmental disability, and (2) for whom a licensed practitioner of the healing arts has recommended intensive home- and community- based services to correct or ameliorate their disorders.”

Judge Jackson appointed the Southern Poverty Law Center, National Health Law Program, National Center for Law and Economic Justice, Disability Rights Louisiana, and O'Melveny & Myers, LLP as legal counsel for the class. The class counsel would like to hear from you if you believe you are a class member or you are impacted by this lawsuit.

**If you or a child in your care is a Medicaid recipient under age 21 who has been unable to get Medicaid home or community-based mental health or behavioral health services, please contact the Southern Poverty Law Center at:
https://www.splcenter.org/la_mental_health_lawsuit_contact_us or 1-800-358-2337.**