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Home and Community-Based Alternative Waiver Guidance Relative to the 2019 Coronavirus (COVID-19) Pandemic

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The purpose of this time-limited guidance is to inform Home and Community-Based Alternatives (HCBA) Waiver Agencies of temporary operational flexibilities for Home and Community-Based Services (HCBS) waivers during the COVID-19 pandemic. This guidance describes approved flexibilities for the HCBA Waiver.

BACKGROUND

On April 2, 2020, Centers for Medicare & Medicaid Services (CMS) approved an [Appendix K](#) request by the Department of Health Care Services (DHCS) to implement temporary operational flexibilities for HCBS waivers. The authorized flexibilities are effective February 4, 2020, through June 30, 2020, and are intended to help ensure California is able to meet the needs of waiver participants receiving medically necessary services during the COVID-19 pandemic.

GUIDANCE

DHCS will allow the following changes to current HCBA Waiver service delivery methods, through June 30, 2020:

- I. Services
 - a. Temporarily permit payment for services rendered by family caregivers or legally responsible individuals to provide Waiver Personal Care Services (WPCS) when authorized WPCS providers are prevented from providing services because of COVID-19. By temporarily allowing participants to receive personal care services from their spouse or parent living with them, the potential for exposing participants to the virus is reduced. Family caregivers or legally responsible individuals shall only be authorized to provide WPCS in accordance with the Plan of Treatment (POT), for the

number of hours that are not provided by other direct service providers within a 24-hour period. Spouses/parents of minor children providing WPCS hours must document the number of hours they provide WPCS in time sheets that are submitted to the State's Case Management Information and Payrolling System (CMIPS) II for payment;

- b. Temporarily modify provider qualifications to permit unlicensed WPCS providers as long as they are currently In-Home Supportive Services (IHSS) providers. In cases in which a participant's WPCS provider is unable to provide care, the State would allow WPCS to be provided by an individual who is not enrolled as an IHSS provider through the County Public Authority by way of temporary approval by the Waiver Agency. The expectation would be that the individual would be required to enroll as an IHSS provider within 60 days of Waiver Agency approval to receive retroactive payments for services provided during the emergency;
- c. Temporarily modify provider types to allow for Certified Nurse Assistants to provide Private Duty Nursing (PDN), in addition to currently authorized HCBS Waiver Nurse Providers (Registered Nurses, Licensed Vocational Nurses, and Certified Home Health (CHHA)) and Home Health Agencies. This will open up the pool of caregivers who can provide custodial type care in the home. Many health plans and others allow CNAs to provide this level of care in lieu of a CHHA. PDN is the only service that would be affected by the provider type modification;
- d. Temporarily modify licensure or other requirements for settings where waiver services are furnished – specifically, allowing telehealth (telephonic, or virtual live video conferencing) as an alternative option to face-to-face interactions;
- e. Temporarily modify processes for waiver eligibility level of care evaluations and re-evaluations via telephonic or virtual live video conferencing as an alternative option to face-to-face interactions, in accordance with HIPAA requirements. DHCS will temporarily allow HCBA Care Management Teams to perform reassessments and provide monthly case management telephonically or by virtual video conferencing with participants to continue to monitor the health and safety of the population. DHCS requires affected Waiver Agencies to document the reasons for the delayed in-person visits and that any late requirements will be completed the following month, or as soon as possible, no later than June 30, 2020;
- f. Temporarily pause waiver disenrollments of participants who are re-institutionalized, beyond the 30-day limit, because they or their caregiver(s) have contracted the virus, and/or if it is unsafe for them to return to the community because they would be exposed to the virus or without medically necessary services, through June 30, 2020; and

- g. Temporarily allow forms that require participant or legal representative signatures to be signed, scanned, and emailed to the Waiver Agency, or for the documents to be signed digitally, through June 30, 2020. The hard copies with wet signatures can be kept in the participant's residence file until Waiver Agencies can retrieve them.

ADDITIONAL FLEXIBILITIES

State Fair Hearing Request Extension

CMS approved a temporary extension of the state hearing request timeframe, allowing beneficiaries to have more than 90 days, up to an additional 120 days, to request a State Fair Hearing. Specifically, individuals for whom the 90-day deadline would have occurred between March 1, 2020, through the end of the COVID-19 public health emergency, are now allowed up to an additional 120 days to request a State Fair Hearing. All other existing State Fair Hearing processes remain unchanged. DHCS has issued [guidance](#) on Medi-Cal Fee-For-Service (FFS) State Fair Hearings Section 1135 Waiver Flexibilities Relative to COVID-19. A Notice of Action (NOA) [template](#) specific to the COVID-19 timeframe extension is available.

Provision of HCBA Services via Telehealth

Medically necessary services can be delivered by waiver service providers and Waiver Agencies via telehealth, as deemed appropriate by the waiver service provider or Waiver Agency. Waiver service providers and Waiver Agencies should seek to implement telehealth methods that would provide remote consultation as an alternate means of providing critical, medically necessary services. DHCS has issued [guidance](#) on Medi-Cal Payment for Telehealth and Virtual/Telephonic Communications Relative to COVID-19, describing the use of telehealth as an alternate means of providing critical, medically necessary services. For more information regarding Medi-Cal's telehealth policy, please see the Medi-Cal Provider Manual (Medicine: Telehealth).

Discretion in Enforcement of Compliance with Health Insurance Portability and Accountability Act (HIPAA) Regulations during the COVID-19 Response

During the COVID-19 public health emergency, covered health care providers, subject to the HIPAA Rules, may seek to communicate with patients and provide telehealth services through remote communications technologies. Some of these technologies, and the manner in which they are used by HIPAA-covered health care providers, may not fully comply with the requirements of the HIPAA Rules.

The Office of Civil Rights (OCR) will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency.

A covered health care provider that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 emergency can use any non-public facing remote communication product that is available to communicate with patients. Additional information is available from the [U.S. Department of Health & Human Services Health Information Privacy](#).

Provider Enrollment

On March 23, 2020, CMS Approved California's 1135 Waiver Request to allow the temporary enrollment of providers who are enrolled as Medicaid Providers in other states. If a certified provider is enrolled in Medicare or with a state Medicaid program other than California, California may provisionally, temporarily enroll the out-of-state provider for the duration of the public health emergency in order to accommodate participants who were displaced by the emergency under certain circumstances. See Provider Enrollment [guidance](#) from CMS for additional information on flexibilities.

Support for At-Risk Individuals Staying at Home

DHCS has also issued [guidance](#) on Preventing Isolation of and Supporting Older and Other At-Risk Individuals to Stay Home and Stay Healthy During COVID-19 Efforts. This information includes resources for older/at-risk individuals who may need assistance with basic needs like groceries and prescriptions, and much-needed social interaction and connection while stay-at-home orders are in effect.

The HCBA Waiver Agencies will also provide resources to HCBA participants and family members as more information becomes available. Additional information about approved operational flexibilities for HCBS waivers can be found on DHCS' COVID-19 [webpage](#).

QUESTIONS

For further information about this guidance, please contact your assigned DHCS Contract Manager or submit a question to the HCBA email inbox at: HCBAalternatives@dhcs.ca.gov.