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HCBA Waiver PL: 24-002

Date: January 23, 2024

To: Home and Community-Based Alternatives Waiver Agencies

Subject: Telehealth Policy

PURPOSE

This Policy Letter (PL) provides guidance to Medi-Cal Home and Community-Based Alternatives (HCBA) Waiver Agencies (WA) on the post Novel Coronavirus Disease (COVID-19) Public Health Emergency (PHE) telehealth policy.

BACKGROUND

In response to the COVID-19 PHE, the Centers for Medicare & Medicaid Services (CMS) approved several 1915(c) Home and Community-Based Services (HCBS) Waiver modifications under Appendix K authority, for the HCBA Waiver. These modifications allowed temporary flexibilities, such as providing services via telehealth. The Department of Health Care Services (DHCS) submitted a request to CMS to extend emergency flexibilities for up to six months after the end of the PHE. The COVID-19 PHE ended on May 11, 2023, and the Medi-Cal Appendix K flexibilities ended November 11, 2023.

To align with DHCS telehealth policy and to expand access to waiver services, DHCS submitted to CMS an amendment for the HCBA Waiver to make telehealth a permanent option for the provision of certain waiver services. On November 1, 2023, CMS notified DHCS¹ that the Medi-Cal HCBA Waiver Amendment² was approved effective November 12, 2023.

Additionally, pursuant to Section 380 of Assembly Bill (AB) 133 (2021-2022),³ DHCS convened a Telehealth Advisory Workgroup⁴ for the purposes of informing the 2022 – 2023 Governor's Budget and the development of post-PHE telehealth policies. DHCS updated its permanent telehealth policies, as reflected in the DHCS Telehealth Policy

¹ CMS Letter, Nov. 1, 2023, (<https://www.dhcs.ca.gov/services/ltc/Documents/CA-0139-R06-01-Approval-Letter-11-1-2023.pdf>).

² HCBA Waiver with Telehealth Amendment, (<https://www.dhcs.ca.gov/services/ltc/Documents/Approved-HCBA-Waiver-with-Telehealth-Amendment-11-1-23.pdf>).

³ Assembly Bill (AB) 133 (2021-2022), (https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB133).

⁴ DHCS Telehealth Advisory Workgroup (<https://www.dhcs.ca.gov/provgovpart/Pages/TelehealthAdvisoryWorkgroup.aspx>).



Paper,⁵ Telehealth Executive Summary,⁶ DHCS Telehealth Provider Manual,⁷ Welfare and Institutions Code section 14132.725, and 2021-2022 Assembly Bill Numbers 32 and 184.⁸

POLICY

In alignment with the above described authorities allowing telehealth as an acceptable modality for services under the Medi-Cal program, the HCBA Waiver services identified below can now be provided pursuant to Medi-Cal's Telehealth Policy and as agreed upon by the applicant, beneficiary, legal representative, and provider. All authorized HCBA Waiver service providers rendering Medi-Cal covered benefits or services under this policy must comply with all applicable state and federal laws. Telehealth delivery services must meet [Health Insurance Portability and Accountability Act \(HIPAA\)](#)⁹ requirements.

Telehealth Requirements

HCBA Waiver services that may be provided via telehealth include Case Management, Community Transition Service, Comprehensive Care Management, Family/Caregiver Training, and Transitional Case Management. In order to provide these HCBA Waiver services via telehealth the Waiver Agencies must comply with the following requirements:¹⁰

1. Participants must be allowed to choose to receive services via telehealth or in-person.
2. Services provided via telehealth must meet the individual's needs, as included in their person-centered care plan.
3. The waiver service provider believes that the service being provided via telehealth is clinically appropriate based upon evidence-based medicine or best practices or both. Additionally, the telehealth service must meet the procedural definition of the Current Procedural Terminology (CPT), or Healthcare Common Procedure Coding System (HCPCS) code associated with the service, as well as follow any additional guidance provided by DHCS.

⁵ DHCS' Post-COVID-19 Public Health Emergency: Final Telehealth Policy Proposal, December 2022, (<https://www.dhcs.ca.gov/provgovpart/Documents/Telehealth-Policy-Paper.pdf>).

⁶ DHCS' Telehealth Executive Summary, (<https://www.dhcs.ca.gov/provgovpart/Documents/DHCS-Telehealth-Policy-Exec-Summary.pdf>).

⁷ DHCS' Telehealth Provider Manual, (<https://www.dhcs.ca.gov/provgovpart/Documents/mednetele2023.pdf>).

⁸ AB 32 (2021-2022), (https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB32); AB184 (2021-2022), (https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB184).

⁹ U.S. Dept. of Health & Human Services, HIPAA and Telehealth: Telehealth Privacy and Security, (<https://www.hhs.gov/hipaa/for-professionals/special-topics/telehealth/index.html>).

¹⁰ See, HCBA Waiver with Telehealth Amendment, (<https://www.dhcs.ca.gov/services/ltc/Documents/Approved-HCBA-Waiver-with-Telehealth-Amendment-11-1-23.pdf>) pgs. 16-17 of 402.

4. Services will only be provided via telehealth if the needs of the beneficiary can be met remotely. Telehealth must not replace direct care that can only be provided in-person.
5. Services provided via telehealth must be delivered in a way that respects the privacy of the individual, especially in the instances of toileting, dressing, etc.
6. Providing the service via telehealth must not prevent the facilitation of community integration as defined in 42 CFR 441.301(c)(4). Remotely delivered services can be provided to multiple individuals at one time (without sharing private health information), which presents individuals the opportunity to interact with others, while receiving services in their preferred delivery method.
7. The waiver service provider must inform the patient prior to the initial delivery of telehealth services about the use of telehealth and obtain consent from the individual for each use of telehealth as an acceptable mode of delivering health care services. If personal care is needed while telehealth is being provided, the individual and/or person supporting the individual would conduct personal care activities out of the line of sight of the telehealth provider, turn off video/audio communication during that time, or reschedule the telehealth visit. If the telehealth includes video cameras and/or monitoring devices, privacy must be protected. In instances where privacy cannot be secured by the individual, the telehealth provider would pause the telehealth service until confirming it was appropriate to resume.
8. Providing the service via telehealth must not impede, replace, or prevent the successful delivery of HCBS for individuals who need hands-on assistance/physical assistance. The goal of using technology is not to replace human assistance, but to increase access to care and maximize the use of technology to support people where appropriate.
9. Support must be provided to individuals who need assistance with using the technology required for the delivery of the HCBS via telehealth. The individual's person-centered planning team is responsible for determining the extent of training necessary for the individual to access their services remotely, and for ensuring that the necessary training is provided and understood by the individual or legal guardian. Family members may also be eligible for training, as appropriate, to support the provision of services if determined to be beneficial for the individual. If the individual is unable to properly utilize the technology, with or without assistance, then telehealth is not appropriate.
10. The waiver service provider must document consent for the use of telehealth from the beneficiary or their authorized representative in the beneficiary's Plan of Treatment (POT) and/or the monthly case management notes for each use of telehealth.

If the waiver participant's needs cannot be met via telehealth services because physical, in-person assistance is required to support the waiver participant's health and safety,

then telehealth services shall not be an option and in-person service delivery shall be the method of service delivery. Providers may deny a participant's request for telehealth services with the appropriate documentation of the reasons why. For example, a participant is a fall risk and the WA needs to observe the environment for applying appropriate interventions and education for the specific community setting. Other examples of health/safety reasons a site may deny a participant's request for telehealth may include but are not limited to the following: open Adult Protective Services (APS) case, critical incidents, and hospitalizations.

Documentation Requirements

As part of the DHCS audit process, WAs will be required to provide DHCS POTs and case management notes from the monthly Comprehensive Care Management meetings for individuals who chose to receive waiver services via telehealth. These documents must demonstrate that HCBA Waiver beneficiaries and/or their authorized representatives were properly notified of their choice to receive HCBA Waiver services via telehealth or in-person. These documents must also demonstrate that telehealth visits were conducted appropriately, and that all of the above described requirements were met.

Should you have any questions about the content of this PL, contact DHCS at HCBAalternatives@dhcs.ca.gov.

Sincerely,

ORIGINAL SIGNED BY

Cortney Maslyn, Chief

Integrated Systems of Care Division Department of Health Care Services