pennsylvania
DEPARTMENT OF HUMAN SERVICES

March 25, 2021

To: Community HealthChoices Managed Care Organizations

Subject: Temporary Changes to the Community HealthChoices 1915(c) Waiver-Revised

The Centers for Medicare & Medicaid Services (CMS) approved temporary changes to the Community HealthChoices (CHC) 1915(c) waiver beginning March 6, 2020 in response to the COVID-19 pandemic. Approval of these changes is covered under Appendix K, Emergency Preparedness and Response, which states may use during emergency situations to request amendments to their approved waivers. These changes address potential staffing shortages and the need for service provision not included in approved service descriptions to ensure participant health and safety needs can be accommodated for the duration of the COVID-19 statewide emergency. The duration of the approval may be extended depending on the length of the declared emergency.

In response to continued fluctuation in COVID-19 cases, the Office of Long-Term Living (OLTL) submitted an amendment to Appendix K to CMS for the CHC and OBRA Waivers in January 2021. The purpose of the amendment was to extend the effective date, allowing some flexibilities to continue until six months after the end of the federal public health emergency, or another date determined by OLTL. CMS has approved the amendment. This guidance rescinds and replaces the guidance dated January 4, 2021. Additionally, this guidance clarifies flexibilities that remain available until six months after the end of the federal public health emergency, or another date determined by OLTL. The federal public health emergency is set to expire on April 21, 2021; however, it's possible the federal government will decide to extend the emergency beyond April. Please use this public health emergency website link to see the current and future public health emergency declarations related to COVID-19.

The changes outlined below provide flexibilities for Service Coordinators and providers as they work with participants who may be facing disruption in services due to COVID-19. The flexibilities outlined below will not apply to all participants and should not be considered across-the-board changes that must be implemented for each participant. **These flexibilities must be evaluated on a case-by-case basis in coordination with the CHC Managed Care Organizations (CHC-MCOs).** Providers must check with the CHC-MCOs for any additional specific requirements for billing.

Guidance for Determining Whether the Amendments in Appendix K Apply

All changes authorized by Appendix K, as explained below, may only be implemented for participants impacted by COVID-19. The following questions can be used to determine whether requests and authorizations will be covered under Appendix K:

What change occurred for the participant as a result of COVID-19?

a. Was the participant receiving services in a setting that closed?

b. Has the participant tested positive for COVID-19 that requires relatives to render services when direct care workers are unwilling or unable to render services while the participant remains positive for COVID-19?

c. Has the participant's caregiver or a person with whom they live tested positive for or exhibited symptoms of COVID-19?

d. Has the participant's direct care worker tested positive for or exhibited symptoms of COVID-19?

e. Is the participant's direct care worker isolating at home or quarantined due to exposure to someone who tested positive or exhibited symptoms of COVID-19?

f. Is the participant's direct care worker unable to render services due to caring for a child or children due to closure of schools or day care programs as a result of COVID-19?

g. Is the participant's direct care worker unable to render services due to caring for a family member who tested positive for or exhibited symptoms of COVID-19?

h. Is the provider unable to provide staffing at pre-COVID-19 required levels due to overall shortages of staffing and inability to secure additional staff?

General Billing Guidance

[Providers must check with the CHC-MCOs for specific billing requirements.]

- Providers must contact the participant's service coordinator to communicate changes to services or settings.
- If a provider decides to change their business practice, e.g., modifying staffing ratios, limiting services or suspending services, the provider must contact the appropriate CHC-MCO before making the change.

Waiver Services

Personal Protective Equipment (PPE) such as gloves, gowns and masks for unpaid/informal caregiver and participant use can be obtained as **Specialized Medical Equipment and Supplies if no other source is available.** PPE may be added to a participant's PCSP without the need for a comprehensive needs assessment or a physician's prescription. Purchase and utilization of PPE must be in accordance with CDC guidelines and CHC-MCO guidance.

For the following services, service limitations are temporarily lifted during the COVID-19 emergency declaration:

- **Adult Daily Living Services (upon reopening of adult day centers)** – Normally, Long-Term or Continuous Nursing cannot be provided simultaneously with Adult Daily Living Services. Temporarily, Long-Term or Continuous Nursing may be provided as a separate service at the same time that Adult Daily Living Services are provided to ensure participant health and safety needs can be met.

- **Residential Habilitation** – Normally, Long-Term or Continuous Nursing and Residential Habilitation cannot be on a PCSP at the same time. Temporarily, Long-Term or Continuous Nursing may be provided as a separate service at the same time that Residential Habilitation is provided to ensure participant health and safety needs can be met.

- **Personal Assistance Services (Agency and Participant-Directed) and Participant-Directed Community Supports** – Normally, some family members can provide Personal Assistance Services and Participant-Directed Community Supports, with exceptions.

  On a case by case basis, temporarily, spouses, legal guardians, and persons with power of attorney may serve as paid direct care workers.

  These situations **must** be reviewed by OLTL on a case by case basis. This flexibility is only available when scheduled workers are not available due to COVID-19 and the participant's emergency backup plan cannot be implemented. Spouses, legal guardians and persons with power of attorney will be allowed to serve as paid direct care workers only until a replacement direct care worker is in place and in no case beyond the duration of the COVID-19 emergency declaration.

  This temporary flexibility does not apply in circumstances where a participant or their representative refuses services due to COVID-19 safety concerns despite the direct care worker(s) being available to provide services.

  Under the participant-directed model, spouses, legal guardians and persons with power of attorney must be enrolled as direct care workers through Public Partnerships, LLC (PPL) and undergo criminal background checks and child abuse clearances as required by law.

- **Respite** – Normally, Respite can be authorized for up to 14 consecutive days in an institutional facility and may be increased up to 29 consecutive days, based on need and with the prior approval of the CHC-MCO. Temporarily, Respite in a licensed facility may be extended beyond 29 consecutive days with prior approval of the CHC-MCO, in order to meet the participant health and safety needs. The need for additional Respite must be a result of COVID-19 and necessary to meet the participant's health and safety needs.

[Providers must check with the CHC-MCOs for any additional billing requirements.]

Expanded Settings Where Services May Be Provided

- **Residential Habilitation and Structured Day Habilitation Services** – may be provided to participants by Residential Habilitation and Structured Day Habilitation staff in private homes.
- **Structured Day Habilitation** – may be provided remotely using phone or video conferencing to new participants and participants who received the services face-to-face prior to the COVID emergency declaration.
- **Cognitive Rehabilitation and Behavior Therapy** – may be provided remotely using phone or video conferencing to new participants and participants who received the services face-to-face prior to the COVID emergency declaration.
- **Counseling Services** – may be provided remotely using phone or video conferencing to new participants and participants who received the services face-to-face prior to the COVID emergency declaration.
- **Adult Daily Living Services** – may be provided remotely by telephonic or web-based means. See additional guidance here.

Modification of Worker Qualifications

- **Residential Habilitation, Structured Day Habilitation Services, Adult Daily Living (upon reopening of adult day centers), and Personal Assistance Services** – Individual staff members who are qualified to provide any one of these services may be reassigned to provide Residential Habilitation, Structured Day Habilitation Services, Adult Daily Living, and Personal Assistance Services.

  All staff should receive training on the PCSP of the participant for whom they are providing support. Training on the PCSP must consist of basic health and safety support needs for that individual.

Level of Care Assessments and Needs Assessments/Reassessments

- **Initial Level of Care Assessments using the FED** – may be conducted remotely using phone or video conferencing; the face-to-face requirement is temporarily waived.

- **Annual Reassessments, including the needs assessment and level of care** – may be conducted remotely using phone or video conferencing; the face-to-face requirement is temporarily waived. Reassessments may be conducted remotely using phone or video conferencing at the participants choice or when the CHC-MCO and/or participant identified that risk factors may be present.

Annual reassessments, including the needs assessment, that were delayed beyond the 365th-day must be completed no later than December 31, 2020, which is 6 months after the issuance of the June 26, 2020 transition plan.

Service Coordinators must receive education and training from the CHC-MCOs on how to evaluate individual risk factors and protect themselves from potential exposure according to the guidance issued by the CDC and the Department of Health.

Annual Reassessments, including the needs assessment, may be conducted face-to-face when possible. Service Coordinators should maintain safe behavioral practices as defined by the CDC and the Department of Health when doing so.

- **Comprehensive Needs Reassessments** – may be conducted remotely using phone or video conferencing when a participant's needs change, when the participant requests a reassessment, or following trigger events.

  Service Coordinators must receive education and training from the CHC-MCOs on how to evaluate individual risk factors and protect themselves from potential exposure according to the guidance issued by the CDC and the Department of Health.

  The qualifications for the individuals conducting these assessments will not change.

Person-Centered Service Planning/Service Coordination

- **Monitoring of the PCSP** – Service Coordinators may monitor participants and PCSPs remotely by telephone where face-to-face contacts are usually required. Service Coordinators are encouraged to contact participants frequently to ensure participants' needs are being met during the COVID-19 emergency declaration.

- **Person-Centered Planning Team (PCPT) meetings and plan development** – may be conducted entirely using telecommunications. Members of the PCPT, determined at the discretion of the participant, may also participate remotely using phone or video conferencing.

Retainer Payments to Address Emergency Related Issues

- **Personal Assistance Services** – During the COVID-19 emergency, retainer payments to direct care workers in agency and participant-directed models may be made when the participant is hospitalized, absent from their home, or in isolation and unable to receive services due to COVID-19. Personal Assistance Services retainer payments may not exceed 15 days – the number of days for

which OLTL authorizes a payment for "bed-hold" in nursing facilities. Retainer payments will not be available when another reasonably equivalent assignment is made available to a direct care worker or when the worker is laid off and collecting unemployment. CHC-MCOs will provide additional guidance to agencies and workers regarding these retainer payments.

[Providers must check with the CHC-MCOs for any additional requirements.]

Documenting what actions were taken and maintaining evidence for why actions were taken.

In addition to notifying the CHC-MCO, a provider should document any changes to their operations as a result of COVID-19 and maintain evidence to support why the changes were made. Doing so will help demonstrate the basis for an action. In general, evidence that should be maintained includes, but is not limited to:

- **Orders or notices from Federal, State, and local authorities that support changes to operational procedures.**

- **Correspondence and other records demonstrating inability to meet required staffing ratios or response times.** Example: Provider's employees are unable to report to work due to COVID-19-related reasons. Provider attempts to secure temporary staff from other staffing agencies, but each agency reports that they too are experiencing staff shortages. As a result, Provider is out of compliance with required staffing ratios. Provider should maintain documentation of employee unavailability and retain copies of correspondence with each of the staffing agencies to demonstrate that all possible efforts were made to secure enough staff.

- **Records demonstrating changes made in staffing or location of service provision.** Example: Provider temporarily closes its Structured Day Habilitation Program and reassigns staff to provide services to participants in their homes. The provider should retain a copy of this notice, documentation of staff reassignments and steps taken to ensure reassigned staff have required training to ensure health and safety support of the participant.

- **Document all services performed to include but not limited to:**
  - Participant name
  - Participant date of birth
  - Date of service
  - Services performed
  - Start and stop times of the services performed
  - Diagnosis
  - Individual performing the services

  - Service location

- **Providers should maintain fiscal records in accordance with 55 Pa. Code §§ 52.15 and 1101.51 to document service delivery and claims submissions.**