NEW YORK STATE | Department of Health | Medicaid

Announcement

Public Health Emergency (PHE) Flexibilities Related to the Medicaid Children's Waiver and Health Home Services

February 2, 2024

TO: Children's Waiver Home and Community Based Service (HCBS) Providers, Children and Family Treatment and Support Services (CFTSS) Providers, Health Homes Serving Children (HHSC), and Children and Youth Evaluation Services (C-YES)

The federal COVID-19 Public Health Emergency (PHE) declaration ended on May 11, 2023, and flexibilities authorized under the HCBS Children's Waiver Appendix K ended on November 11, 2023. This document summarizes the Public Health Emergency (PHE) flexibilities related to the Children's Waiver and Health Home Care Management that were in place and the post-PHE changes, **including changes that take effect in January or February 2024, which are highlighted in bold**.

Contents

The following table provides a high-level detail of the various flexibilities implemented during the public health emergency that have ended, the effective date, and relevant links with more information. Information is also available on the Children's Waiver website under the COVID tab at Overview of 1915c Children's Waiver and 1115 Waiver (ny.gov) and on the main Health Home website at Medicaid Health Homes - Comprehensive Care Management (ny.gov).

Flexibilities That Have Already Expired		
Flexibility	**Date**	**Relevant Link(s)**
Respite Telehealth	January 1, 2023	Respite Announcement
HCBS/LOC Eligibility Determination	January 26, 2023	HCBS/LOC Eligibility Determination Guidance
Plan of Care (POC) Flexibilities	April 1, 2023	POC Announcement
License Practitioner of the Healing Arts (LPHA) Attestation Form	April 7, 2023	LPHA Guidance
Utilization Management (Soft Limits, Medical Necessity Documentation, etc.)	March 16, 2023 Updated May 8, 2023	Utilization Management Announcement
Children and Family Treatment and Support Services (CFTSS) Flexibilities	May 11, 2023	CFTSS Guidance Allowable Uses of Telehealth for CFTSS

A. HCBS Delivery

1. *Providing HCBS via Telehealth*

PHE Flexibility: Face-to-Face (in-person) Requirements Waived for Home and Community-Based Services Provided under the 1915(c) Children's Waiver. This was included in the Children's Waiver PHE flexibilities guidance issued on March 14, 2020 (Updated June 25, 2021).

Post-PHE Guidance: Effective January 1, 2023, HCBS Respite was required to be in-person as outlined in the Respite Telehealth Announcement, and providers were required to revert to the original guidance provided in the HCBS Provider Manual.

Effective February 11, 2024, all HCBS must be delivered in-person to the member in an allowable setting as outlined in the HCBS Provider Manual.

2. *Monthly HCBS Requirement*

PHE Flexibility: During the PHE, the monthly HCBS requirement was waived if the HCBS provider was unable to reach the participant/their family or if the need for the serves can demonstrate was less than monthly. This monthly service requirement was only allowed to be waived for two consecutive months.

Post-PHE Guidance: Effective February 11, 2024, the requirement to provide a monthly service is no longer waived. Each eligible and enrolled Children's Waiver

member must receive at least one monthly HCBS to remain enrolled in the Children's Waiver, unless the member has "Family of One" Medicaid and is receiving Health Home comprehensive care management as their only monthly service.

3. *HCBS Setting Rule*

PHE Flexibility: Under **COVID-19 Guidance issued on August 6, 2020**, with appropriate justification, HCBS providers could provide HCBS to enrolled Waiver participants who were displaced and living in a shelter or hotel due to the PHE. HCBS staff could continue to provide services to the person in the same scope, frequency, and duration as described in the person's POC.

Post-PHE Guidance: Effective February 11, 2024, Waiver participants must be served within an appropriate and allowable HCBS setting as outlined in the HCBS Provider Manual. HCBS can be provided in a shelter or hotel if it meets the HCBS Settings Rule requirements. HCBS providers and care managers can contact the BH.Transition@Health.ny.gov on specific situations, if there are questions.

B. In-Person Service Coordination for Health Home and C-YES Care Managers

PHE Flexibility

As indicated in the PHE Guidance issued on March 29, 2020 (Updated June 2021), if the waiver participant chooses not to have an in-person meeting or it's determined that an in-person meeting is not appropriate during the PHE, the Health Home or C-YES care manager should use telephonic or telehealth. Care Managers needed to respond to participants within 24 hours and with appropriate participant's consent, the care manager must be in contact with the HCBS providers and are also encouraged to contact other involved providers, informal supports, and family members to ensure other supports are in place.

Post-PHE Guidance

C-YES – **Effective February 11, 2024, if not already implemented, C-YES delivery of services including intake appointments, assessment visits, or on-going care management must be provided in-person with the member and family in an allowable setting chosen by the member/family.** C-YES care managers should consider meeting the member periodically throughout the year in their home to evaluate the living situation of the member.

Health Home Care Management – Health Home Serving Children – **Core service and in-person requirements, including requirements HCBS care management will be outlined in the *"HHSC Care Management Core Service Requirements and Billing Policy"*, which will be released shortly.**

C. HCBS / Level of Care (LOC) Eligibility Determination

Several flexibilities related to HCBS Eligibility Determinations were in place, as indicated in the PHE Guidance issued on March 29, 2020 (Updated June 2021).

1. *In-Person HCBS Eligibility Assessments*

   PHE Flexibility: HHCMs and C-YES were able to conduct the HCBS Eligibility Determination assessment by telephone or permitted telehealth modalities.

   Post-PHE Guidance: Effective February 11, 2024, all HCBS Eligibility Determinations must be conducted in-person with the member and family.

2. *Annual HCBS Eligibility Determination*

   PHE Flexibility: The HCBS Eligibility Determination annual reassessment could be waived, allowing the member to stay enrolled in the Children's Waiver. Justification for the waived assessment is required in the case record. Reminder: HH/C-YES care managers must ensure that all HCBS annual reassessments that were not conducted due to the PHE, are so noted within the Uniform Assessment System (UAS) as an approved PHE waived assessment and the member continued to remain in the Waiver under the "State Review node".

   Post-PHE Guidance: As outlined in guidance issued on January 26, 2023, PHE exceptions for the annual HCBS Eligibility Determination ended in January 2023. Children's HHCM and C-YES assessors must ensure that all currently enrolled and eligible members of the HCBS Children's Wavier have timely HCBS Eligibility Determinations, including members enrolled under Family of One budgeting.

   Additional guidance prohibiting billing for Health Home care management for members with overdue assessments is available here.

3. *Waiver of Disenrollment*

   PHE Guidance: The Ineligible HCBS/LOC Clarification issued in October 2020, established an exception process for children/youth found ineligible for HCBS to keep them enrolled in the Waiver. If an annual HCBS re-assessment was completed and the child/youth was found HCBS/LOC ineligible AND 1. There is a concern of a potential risk of institutionalization (hospital/nursing home/residential) in absence of the waiver services during the State of Emergency, OR 2. The child/youth Medicaid eligibility was determined on Family of One budgeting, the child should not be disenrolled unless otherwise directed by the member/family. In these circumstances, an HCBS Ineligible exception form needed to be completed, reviewed by the HH/C-YES and submitted to DOH. If approved, this allowed the child/youth to remain enrolled for another year.

   Post-PHE Guidance: As specified in the January 2023 guidance and in the January 2024 Children's Home and Community Based Services (HCBS) Waiver Eligibility

and Enrollment Policy, HCBS Eligibility extensions are not permitted. Care manager must complete the HCBS eligibility assessment within 365 days of the previous assessment and issue a Notice of Decision. In addition, effective April 1, 2024, an SSI or DOH SDRU determination is required for ongoing Children's Waiver enrollment for Children's Waiver enrollees in Medically Fragile (MF) and Developmentally Disabled and Medically Fragile (DD/MF) Target Populations. If the child/youth is found not to meet the disability criteria and receives a denial from the SDRU/SSI, then the child/youth no longer meets the HCBS MF Target Population criteria and must be disenrolled from the Children's Waiver within 30 days from the date of the denial.

4. *Initial HCBS/LOC Eligibility Determination*

PHE Flexibility: During the PHE, supporting documentation from other involved professionals could be obtained 90 days after the HCBS Eligibility Determination was completed to ensure timely assessments.

Post-PHE Guidance: All HCBS Eligibility Determinations must have all supporting documentation at the time the assessment is conducted. Clarifying guidance on documentation requirements for the SED Target Population was issued in April 2023.

5. *License Practitioner of the Healing Arts (LPHA) Attestation Form*

PHE Flexibility: For children/youth being discharged from a higher level of care, such as a hospital, residential treatment facility or center (RTF/RTC), State Hospital, or nursing home, the LPHA Attestation form was not needed for the initial HCBS Eligibility Determination. For children/youth referred for an HCBS Eligibility Determination by a Licensed Practitioner of the Healing Arts, the LPHA Attestation Form was not needed. In these instances, the date entered in the UAS for receipt of the LPHA Attestation form is the date the HHCM or C-YES staff is completing the HCBS/LOC assessment in the UAS.

Post-PHE Guidance: In April 2023 clarifying guidance was issued related to the LPHA form and documentation requirements. Upon federal approval of the Children's Waiver Renewal in 2022, the LPHA Attestation form was no longer required for the Medically Fragile and Developmental Disability Medically Fragile Target Populations, as outlined in this guidance: Changes to Licensed Practitioner of the Healing Arts (LPHA) Attestation Form (ny.gov).

D. HH Plan of Care (POC) Process

1. *Electronic Signatures and Verbal Consents*

PHE Flexibility: Members were permitted to provide consent and sign the plan of care (POC) electronically via tablet, email, or fax. Verbal consent from the participant could be used on a temporary basis.

Post-PHE Guidance: As noted in this POC guidance, effective April 2023, consent to share information must be provided in writing, either collected on paper forms or electronically by the member/parent/guardian/legally authorized representative. *Verbal consent in lieu of a signature is no longer allowed*.

2. *Timeline for Completion of the Plan of Care*

PHE Flexibility: The timeline for completion of the POC for new enrolled Health Home members was extended to 120 days.

Post-PHE Guidance: As noted in this POC guidance, effective April 2023, POCs must be completed within 60 days of Health Home enrollment.

3. *POC Reviews and Team Meetings*

PHE Flexibility: During the PHE, timeframes for completion of POC reviews and team meetings were waived.

Post-PHE Guidance: POC guidance effective April 2023 terminated this flexibility. POC reviews and team meetings must be completed according to established timeframes. Refer to Plan of Care Policy and Plan of Care Flexibilities Announcement for additional information.

4. *Utilization Review and Service Authorization*

PHE Flexibility: For children/youth enrolled in a MMCP, once the referred HCBS provider had determined Frequency, Scope, and Duration for the service, the HCBS provider must send the completed Children's HCBS Authorization and Care Manager Notification Form to the MMCP as per the Children's HCBS POC Workflow Policy. During the PHE, MMCP utilization management continued to be suspended, as it had been for the initial carve-in of HCBS benefits.

Post-PHE Guidance: Effective March 16, 2023, and updated May 8, 2023, MMCP and HCBS providers must follow Utilization Management and other Requirements for the 1915(c) Children's Waiver regarding the Children's HCBS Authorization and Care Management Notification Form.

E. Rounding of Service Times

PHE Guidance: To allow for billing flexibility the regular (i.e., pre-PHE) service time requirements were relaxed, as outlined in the COVID-19 Guidance issued on March 14, 2020 (Updated June 10, 2020).

Post-PHE Guidance: This flexibility ended in 2021, as noted in the Utilization Management and Other Requirements Announcement. Therefore, providers and plans must adhere to the guidance provided in the HCBS Provider Manual.

F. Reportable Incidents

PHE Guidance: During the PHE, Health Homes and HCBS providers were required to continue to report and follow up on incidents in accordance with existing requirements; however, final reporting within 30 days after the incident was waived. Reporting could not be delayed past 90 days after the end of the PHE, as outlined in the Appendix K – COVID-19 Announcement.

Post-PHE Guidance: All Reportable Incidents must be reported as outlined in the policy for Health Homes HH#0005 and for HCBS providers CW#0004, and completed within 30 days of the incident. All final reporting of incidents that occurred during the PHE, were required to be completed no later than August 11, 2023, 90 days after the end of the PHE, as outlined in the Appendix K – COVID-19 Announcement.

G. Retainer Payment for Day and Community Habilitation Providers

PHE Guidance: Follow up and guidance was given to these designated provider types.

Post-PHE Guidance: Retainer Payments were allowed for a limited period of time and all tracking was completed in 2020-2021.

H. Child and Family Treatment and Support Services

PHE Guidance: CFTSS could be delivered via telehealth, when appropriate.

Post-PHE Guidance: Effective May 11, 2023, the flexibilities regarding service time and other flexibilities previously allowed by CFTSS COVID-19 Guidance ended and providers are required to follow guidance provided in the CFTSS Provider Manual. Guidance regarding acceptable uses of telehealth for the delivery of CFTSS has been released by the Office of Mental Health at https://omh.ny.gov/omhweb/guidance/telehealth-guidance.pdf. All providers designated to provide CFTSS must follow the OMH guidance, except for the requirement to obtain OMH certification to offer services via telehealth, which applies only to OMH-licensed providers. In addition, OASAS-certified providers must obtain OASAS certification to offer services via telehealth, in accordance with 4 NYCRR PART 830.5.

Contact

Please send questions relating to this guidance to BH.Transition@health.ny.gov.