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Federal Amendment “K” Extended to March 6, 2021

On August 18, 2020, the Centers for Medicare & Medicaid Services (CMS) approved New York’s request to amend and extend the April 7, 2020 Emergency Preparedness and Response Appendix K to respond to the COVID-19 pandemic through March 6, 2021.

Revisions to Appendix K include the following:

- Extension of Appendix K conditions through March 6, 2021.
- A 50% reduction in units of service for day habilitation and prevocational services (both remote and in-person), to include:
 - 2 hours of service, rather than 4 hours of service, will count as a full day; 1 hour will count as half, such that 2 hours of service (down from 4 hours of service) would count as a full day, and 1 hour of service (down from 2 hours of service) will count as a half day.
- Self-Direction retainer days are extended for an additional 30-day period.

Care Design NY will continue to monitor both fiscal and policy changes related to I/DD service delivery as they occur.

QUESTIONS & ANSWERS

Q. What does the Federal approval of the “K” amendment to OPWDD’s 1915 (c) Home and Community based service waiver mean for individuals and families?

A- Appendix K is a standalone appendix that may be utilized by states during emergency situations to request amendment to approved 1915(c) waivers. It includes actions that states can take under the existing Section 1915(c) home and community-based waiver authority in order to respond to an emergency

I. General Guidance:

1. The waiver is effective 3/7/2020, and on 8/18/20, it was **extended through 3/6/2021**. It can be extended as appropriate and needed.

2. Community Habilitation and Day Services, day habilitation and pre-vocational, can be delivered through telephonic/video (telehealth) means and do not need to be delivered in-person. This includes self-directed community habilitation.
3. Allows Day Services to be delivered in alternative sites (i.e. certified residence, a person's home).
4. Allows Residential Habilitation services for those in a certified residence to be temporarily provided in an alternate location, even out of state.
5. Increases funding to providers to address increase in day-time staffing needs.
6. Provides funding support for providers to retain at least 80% of their revenue for day services and community habilitation that cannot be delivered due to the state of emergency.
7. Annual Level of Care recertification, which is required in order to receive Care Management and Waiver Services, can be delayed up to 6 months from the due date.

II. Individuals who live at home with family/others/on their own:

1. Community habilitation and day services can be delivered either in person (in the home) or remotely.
2. If an individual is not able to receive day services from their provider, they can receive community habilitation instead during those hours.
3. For school age individuals, community habilitation and respite services can be provided during school days, except during e-learning time scheduled by the school, utilizing the hours already approved by OPWDD. According to OPWDD, no new hours of support will be approved to cover this time.

III. Individuals who live in a certified supported apartment:

1. Community habilitation and day services can be delivered either in person (in the home) or remotely.
2. If an individual is not able to receive day services from their provider, they can receive community habilitation instead during those hours.

IV. Individuals who live in a certified group residence:

1. Day services can be delivered in the residence if the provider of both services is the same provider, if they are not, the residential provider is being provided funding for additional weekday staff hours to cover that time.

Q. How does the temporary changes/waiver of certain requirements in Care Management impact individuals and families?

1. Face to Face (in-person) requirements are waived meaning that tele-health can be the mode of service delivery (telephonic or video).

2. Services may be initiated once approved by OPWDD while awaiting the Care Manager's and individuals/representative's Life Plan signature.
3. Changes in the amount, duration and scope of any service, must be updated in the Life Plan, through an addendum, as soon as possible but no later than 60 days after the initiation of the service or change. Such changes can be retroactive to the date of approval.
4. Corresponding Staff Action Plans must also be updated, although timelines have been waived until 60 days following the cessation of the state of emergency.
5. The following requirements are waived and can be postponed until the next semi-annual Life Plan review occurs, but no later than 6 months after cessation of the state of emergency:
 - a. That at least one face-to-face Life Plan meeting is conducted each year.
 - b. The annual I AM assessments.
 - c. Finalization of the Life Plan.
6. However, whenever possible, and if the individual and/or their representative would like to go forward with the Life Plan meeting during the state of emergency, the Care Manager should conduct the meeting, with the appropriate attendees as chosen by the individual, using telephonic, telehealth or other appropriate non-face-to face methods that are HIPAA compliant.
7. Service Authorizations and Amendments: During the state of emergency, a Life Plan is not required to accompany a service authorization requests and amendments. Verbal agreement by the individual/representative of the request or amendment is also sufficient.
8. Annual Level of Care Eligibility Determination (LCED) Redeterminations, which are required in order to continue receiving care management and Waiver services, can be deferred for no more than 6 months during the state of emergency.
9. Coordinated Assessment System (CAS) Assessments are temporarily suspended during the state of emergency except for individuals who: are seeking services for the first time, are enrolled in PHP and/or reside in an Intermediate Care Facility (ICF).
10. Willowbrook Class members who live in non-certified settings in the community will be contacted at least 3 times/week.
11. For new enrollees to care management to complete the consent process, DOH supports:
 - a. the use of electronic signature.
 - b. The mailing to newly enrolled members for signature.
 - c. As a last resort informed verbal consent can be utilized but needs to be clearly documented in the members health record. Care Managers will be required to obtain signed consent once the state of emergency is lifted.

The COVID-19 public health crisis is rapidly changing. This information represents the most up to date information we had at the time of publishing. We will update as new information becomes available.