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Continuing COVID Regulatory Flexibility

As of Friday, June 25, 2021, at 12:00 am, the New York State Disaster Emergency declared by Executive Order 202 ended. All subsequent COVID disaster emergency Executive Orders also ended. **At that time, most regulatory flexibilities were extended for an additional 60 days, set to expire on August 25, 2021. This guidance will address continuing COVID disaster emergency related flexibilities for OASAS programs and continuing extensions.**

Modified Criminal Background Checks

The waiver allowing for modified criminal background checks for new and existing staff were rescinded effective Friday, June 25, 2021. As of 12:00 am, June 25, 2021, OASAS providers were required to resume routine processing of background checks, in accordance with 14 NYCRR Part 805, for all prospective employees. This applies to all staff members hired on and after June 24, 2021.

In those instances where background checks were abbreviated, in accordance with the Interim Guidelines, all required background checks must be submitted as soon as practicable **but no later than September 25, 2021.**

Staff members with abbreviated background checks in place, who have regular and substantial contact with individuals served, must be supervised in accordance with OASAS rules and regulations, beginning no later than September 25, 2021.

Telehealth Flexibilities

Pursuant to this guidance and the pending amendments to 14 NYCRR Part 830, OASAS will waive the following regulatory provisions until the proposed amendments to Part 830 are adopted. **Adoption is anticipated September 2021.**

- Amended Definitions: OASAS waives the existing definitions of Part 830.3(f) as follows:
 - Distant site 830.3(f)(1): A distant site may include the practitioner's home, office or other location provided it is located within the United States.
 - Originating site 830.3(f)(2): An originating site may include a temporary location out-of-state.

- Practitioner 830.3(f)(3)(ii): Certified Recovery Peer Advocates (CRPAs) are permitted to delivered telehealth services. CRPAs have been added to the Article 29G of the Public Health Law as authorized practitioners.
- Telecommunication System 830.3(f)(4): The definition of telecommunication system is amended to allow for secure interaction audio and/or video which will permit the continued authorization of service delivery via telehealth to include telephonic only.
 - Expanding services delivered via telehealth: OASAS waives 830.5(a)(5) which provides a list of services which may be delivered via telehealth. Any and all services which are appropriate to be delivered via telehealth are authorized.
 - Initial in-person evaluation for suitability: OASAS waives 830.5(c)(1)(v) which requires an initial in-person evaluation to determine a patient’s suitability for telehealth.
 - Telehealth application process: OASAS waives 830.3(e) requiring an application and operating certificate designation for certified program approval to deliver services via telehealth. Certified prevention and treatment programs may continue to utilize the existing emergency authorization.
 - Any APG requirements outlined pursuant to Part 841 specifying minimum time requirements which contradict the existing COVID disaster emergency modified time requirements for service delivery in accordance with the Disaster State Plan Amendment (SPA), which was recently approved by the Centers for Medicaid and Medicare Services (CMS), are waived. Please see the existing COVID guidance on minimum time requirements for service delivery.
 - Buprenorphine Induction Via Telehealth and Telephone-Only: The national Public Health Emergency declared by the U.S. Department of Health and Human Services (HHS) is currently set to expire on July 14, 2021 and guidance issued by the Drug Enforcement Agency (DEA) allows for DATA 2000 waived practitioners to provide buprenorphine induction via telehealth and telephone-only.
 - Expansion of Article 29-G authorized practitioners and Telephone-Only Services: The Department of Health (DOH) will issue an emergency regulation to allow for the provision of services via telephone-only as well as expand the list of practitioners to include all Medicaid providers currently authorized to provide in-person services.
 - Prevention and Recovery Programs: Prevention and Recovery Programs may continue to operate under existing guidance issued by the Office.

Consent and Confidentiality

Pursuant to the national Public Health Emergency declared by HHS, The Office for Civil Rights (OCR) and SAMHSA also released guidance addressing consent and confidentiality. For the duration of the national Public Health Emergency, which is currently set to expire on July 14, 2021, providers may:

- Utilize certain video-conferencing technologies, even if not fully compliant with HIPAA rules. While allowable, providers are *strongly* encouraged to implement HIPAA

complaint telehealth technologies within their programs as soon as possible if they have not already done so.

- Utilize verbal consent to provide services, documented in the patient record, until such time as written consent may be obtained. Written consent *is* required to *share* patient records, in accordance with 42 CFR Part 2.

Additional Regulatory Flexibilities

OASAS issued a series of COVID related guidance documents which allow for regulatory flexibility in a variety of areas. Such regulatory flexibilities were continued for 60 days after the end of the Emergency, and will continue for an additional 60 days until October 24, 2021 while OASAS evaluates what, if any, additional regulatory flexibility must be extended to providers.

Questions may be directed to PICM@oasas.ny.gov or Legal@oasas.ny.gov.