High-Priority Flexibilities for Behavioral Health Providers During the COVID-19 Crisis

Last Updated: June 17, 2020

Red text indicates updates to the prior version of this deck (published on May 5, 2020).
Given the fluid nature of the COVID-19 response, please consult the latest Federal, State and City guidance as needed for the most up-to-date information.

Agenda

- **Context & Scope**
- **Operational Implications of New Federal & State Flexibilities**
  - Telehealth and Locational Flexibilities
  - Behavioral Health Workforce
  - Administrative Activities
  - Community Mental Health Center Flexibilities
- **Revenue Cycle Implications & Billing Guidance**
- **Provider Relief Fund**

Context & Scope

To support behavioral health and other providers during the COVID-19 crisis, federal and state governments have authorized *emergency funding* and *regulatory relief*.

Goal for this presentation:	**Highlight new flexibilities that have significant implications for behavioral health providers' clinical operations and revenue cycle.**

Sources for Flexibilities Addressed

- The CARES Act
- Section 1135 waivers
- CMS's interim final rule on COVID-19 Regulatory Changes
- U.S. Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA) and Drug Enforcement Administration (DEA) guidance
- New York State Executive Orders (EOs) and Department of Health (DOH) guidance (Office of Mental Health (OMH) and Office of Addiction Services and Supports (OASAS))

See the Appendix for links to these authorities, as well as Manatt summaries and analysis

Note: The flexibilities discussed in this presentation are ***temporary*** unless noted otherwise. Without legislative or regulatory action, these flexibilities will expire when the emergency period ends.

Flexibilities Addressed in this Presentation

This presentation highlights the operational flexibilities most relevant for New York City community behavioral health providers.

	Focus Area(s)	Not Addressed in this Presentation
Provider Type	Community behavioral health providers regulated by Article 31 and 32 of the New York State Mental Health Hygiene Law	Comprehensive emergency psychiatric emergency program Psychiatric hospitals Housing (e.g., supportive housing or shelter) providers
Source of Emergency Flexibilities	Federal legislative, executive action and federal guidance State guidance and regulation	Comprehensive review of additional state flexibilities (*e.g., licensure laws)*
Payers of Interest	Medicaid and Medicare	Commercial plans
Type of Emergency Relief	Regulatory relief	Supplemental funding that is not connected to reimbursement for particular services (*e.g., funds from CARES Act pools except for provider relief pool, Medicare advance payments*)

Operational Implications of New Federal & State Flexibilities

Overview of Flexibilities

Federal and state flexibilities allow behavioral health providers to maintain access to care.

Locational Flexibilities

Leverage telehealth and alternate sites of care to:

- Maintain access to behavioral health services
- Prescribe and dispense buprenorphine and methadone for opioid use disorder (OUD)

Workforce Flexibilities

Maximize practitioner capacity through:

- Streamlined licensure and credentialing
- "Top of license" practice

Administrative Flexibilities

Minimize administrative burdens by temporarily suspending certain:

- Patient notifications
- Documentation requirements

Community mental health center (CMHC)* flexibilities allow CMHCs greater discretion to deliver services at home and target services to those in need

**Medicare defines CMHCs as outpatient facilities that provide partial hospitalization services to Medicare beneficiaries.*

Locational Flexibilities: Overview

By leveraging alternative sites of care, behavioral health providers can increase capacity and minimize staff and patient exposure to COVID-19.

New flexibilities allow behavioral health providers to:

- Deliver services via telehealth so that patients can obtain care while in their homes
- Deliver services in alternate settings including prescribing and dispensing buprenorphine and methadone for OUD

Source: OMH and OASAS Guidance, SAMHSA and DEA Guidance, CMS Blanket Waivers.

Locational Flexibilities: Telehealth Coverage

New York State Medicaid and Medicare have substantially expanded the range of covered telehealth services, including behavioral health services.

Program	Covered Services	Eligible Practitioners	Permissible Locations	Tech Platforms	Reimbursement Implications
New York State Medicaid	• Providers may obtain reimbursement for any service (e.g., counseling, educational services, day treatment, assessments) appropriate for individuals to receive via telehealth • If a patient has a service need that cannot be met via telehealth, it is the expectation that the agency will still ensure the individual's needs are met (e.g., in-person medication injections) • *Blanket telehealth guidance does not change any other service requirements for behavioral health services. Residential facilities are required to maintain 24-hour staffing on-site*		Both patient and practitioner may be anywhere (including at home) No restrictions on urban vs. rural	Common video technologies like FaceTime, Skype, or Zoom Telephone without video	Telehealth and telephonic services billed at regular rate for the applicable service
Medicare	• Practitioner services (see "Eligible Practitioners" column) • Mental health counseling	• Doctors, NPs, clinical psychologists, and licensed clinical social workers • *Eligible behavioral health practitioners are more limited under Medicare than Medicaid*	Same as above (home or clinical setting, urban or rural)	Common video technologies (as above) for practitioner services and counseling Telephone without video for telephone evaluation and management services, and behavioral health counseling and educational services*	Telehealth and telephone services billed at regular rate for the applicable service*

*On April 29, CMS announced that Medicare would reimburse for telephone-only counseling, educational services and evaluation and management services at the regular service rate.

Source: *CMS blanket waivers & interim final rule; CARES Act; HHS OCR guidance; OMH Consolidated Telemental Health Guidance.*

Locational Flexibilities: Telehealth Issues

Behavioral health providers in New York can leverage temporary federal and state flexibilities to streamline telehealth access and delivery.

	Out of State Licensure	Documentation Requirements	Cost Sharing
Medicaid	Practitioners must be licensed in New York if a license is required to deliver the tele-mental service	All behavioral health providers regulated by OMH and OASAS can self-attest to their suitability to deliver services via telehealth to relevant agency and begin delivering services via telehealth immediately upon submission	New York Medicaid does not impose cost-sharing on behavioral health services
Medicare	Will reimburse telehealth services by a practitioner with an out-of-state license	Practitioners may render telehealth services from their home without updating their Medicare enrollment to report their home address	Providers may waive or reduce cost-sharing for Medicare telehealth visits

Source: *CMS blanket waivers & interim final rule; CARES Act; HHS OCR & OIG guidance; OMH and OASAS guidance*

Locational Flexibilities: Medications for OUD

New York has adopted federal flexibility to permit providers to prescribe and dispense buprenorphine and methadone for OUD in alternate locations.

Providers are encouraged to use telehealth/telephone to provide individual and group counseling to patients receiving medications for OUD.

Medication	Initiation of New Patient	Maintenance for Current Patients
Buprenorphine	• Providers may prescribe buprenorphine via video technologies and telephone without an initial in-person medical evaluation	• Providers may prescribe buprenorphine via video technologies and telephone
Methadone	• Opioid treatment programs (OTPs) must initiate methadone in-person for a new patient, which may require several visits to ensure correct dosing • For now, this requirement is dictated by SAMHSA policy and cannot be changed by New York	• For stable patients, OTPs are encouraged to dispense take home doses of 7-28 days as clinically appropriate • OTPs are also permitted to arrange for delivery and alternate pick-up of methadone, including using off-site, non-registered locations to dispense take home doses

Reimbursement Implications

- **Medicaid** managed care plans have been instructed to reimburse OTPs for methadone dispensing using a newly created weekly bundled rate that is based on the Medicare weekly bundles for OTPs
- **Medicare** will reimburse OTPs for audio-only for therapy and counseling services as part of its weekly bundled rate

Source: OASAS Guidance, SAMHSA, CMS and DEA Guidance

Workforce Flexibilities: Overview

New federal and state flexibilities enable behavioral health providers to maximize staff resources and reduce barriers to delivering care.

New flexibilities allow behavioral health providers to:

- ✓ Disregard certain restrictions on **licensure and credentialing**
- ✓ Allow clinicians to **practice at the top of their license**

Note: Licensed practitioners (including volunteers) are shielded from malpractice liability for services that are (1) within their scope of practice and (2) rendered in good faith without gross negligence.

Source: *CMS blanket waivers; NY EOs 202, 202.1, 202.5, 202.10, 202.18; CARES Act s.3215., OASAS Guidance*

Workforce Flexibilities

Relaxed Rules on Licensure and Credentialing

- A behavioral health practitioner (e.g., physician, nurse, clinical social worker, marriage and family therapist, psychologist or mental health counselor) with out-of-state licensure in good standing may:
  - Practice in New York; and
  - Bill Medicare/Medicaid for services rendered in New York, if not excluded from the program or excluded from licensure in any state.
- A behavioral health provider may employ an individual who has successfully completed a criminal background check performed by another State agency without an additional background check.
  - Individuals who have not undergone a background check and been fingerprinted must still complete a background check and fingerprinting.
- SUD residential facilities may obtain waivers for staffing and space configuration to accommodate staffing shortages solation/quarantine needs of patients.
- OASAS has suspended program recertification reviews for certified providers.
- OASAS has extended credentials for SUD providers with credentials expiring as of March 17, 2020.

Streamlined provider enrollment procedures exist for both Medicare and New York Medicaid.

Enhanced Ability for Practitioners to Work at Top of License

- NPs and PAs may supervise care of Medicare patients and order Medicaid home health services.
- NY has lifted requirements for physician supervision/written agreements for NPs, PAs, and medical assistants
- Where required by Medicare, physician supervision may be achieved remotely by telemedicine.
- Where required by Medicaid, supervision of staff may be achieved remotely by telemedicine.
- For residential SUD providers with staff shortages, NY will allow provisional qualified health professionals (QHP) and individuals with a certified alcohol and substance use counselor-trainee (CASAC-T) to serve as QHPs.

Source: *CMS blanket waivers; NY EO 202.13, 15, 18, OASAS Guidance*

Administrative Flexibilities: Overview

Behavioral health providers may prioritize clinical care by suspending or relaxing non-critical administrative and documentation requirements

New flexibilities allow behavioral health providers to:

- **Streamline clinical documentation** practices
- **Suspend certain confidentiality** requirements
- **Delay submission** of FY2019 consolidated fiscal reports to OMH and OASAS, and investigative findings for allegations of abuse, neglect or significant incidents

Source: *CMS blanket waivers; OMH and OASAS Guidance, SAMHSA*

Administrative Flexibilities

Streamlined Clinical Documentation For Select Services*	• Existing clients:
	  • Providers can deliver additional services without updating treatment plans during the emergency
	  • Services should be documented in a progress note
	  • Treatment plan reviews are suspended
	  • Suspension of annual HCBS eligibility determination reassessment for children obtaining HCBS services
	• New clients:
	  • Assessment and initial service plan can be completed via telehealth
	  • Timeframes for completion of treatment plan are suspended
	• Increased reliance on verbal consent for treatment and signatures for treatment plans
	• Suspension of OMH required internal written utilization reviews to determine continued need for services

Relaxed Patient Notification & Confidentiality Requirements	• Providers can use non-HIPAA compliant communications platforms to conduct telehealth visits
	• Discharge planning requirements for residential providers are reduced
	• Regarding Part 2-protected SUD information, providers can currently disclose information without consent in medical emergencies in accordance with long standing policy
	  • OASAS advises providers to obtain verbal consent
	  • *Pending federal implementation of CARES Act:* Protected information may be redisclosed for treatment/payment purposes without additional patient authorizations (*Provision will be permanent)*

Extended Incident Review and Reporting	• From June 4 through July 31, providers can submit investigative findings for Allegations of Abuse or Neglect and Significant Incidents, as well as the hold Incident Review Committee (IRC) meetings, will be temporarily extended from 45 to 60 days following the initial report of the incident

*Applies to services including behavioral health home and community based services, residential services, clinic programs, assertive community treatment, child and adult day programs, partial hospitalization and personalized recovery oriented services

Source: *CARES Act, SAMHSA Guidance, OCR Guidance, CMS blanket waivers (COPs), OMH and OASAS* COVID-19 Guidance

CMHC Flexibilities

New temporary flexibilities give CMHCs greater discretion to deliver services at home and target services to those in need*

- **Locational Flexibilities.** CMHCs can now deliver partial hospitalization and other services at a patient's home including through telehealth
- **Targeted Population.** CMHCs do not need to provide at least 40 percent of their services to non-Medicare eligible patients. This change aims to facilitate appropriate timely discharge from inpatient psychiatric units and prevent admissions to these facilities for Medicare beneficiaries
- **Quality.** CMHCs have flexibility to use their quality assessment and performance improvement (QAPI) resources to focus on challenges and opportunities for improvement related to COVID-19

**Medicare defines CMHCs as outpatient facilities that provide partial hospitalization services to Medicare beneficiaries.*

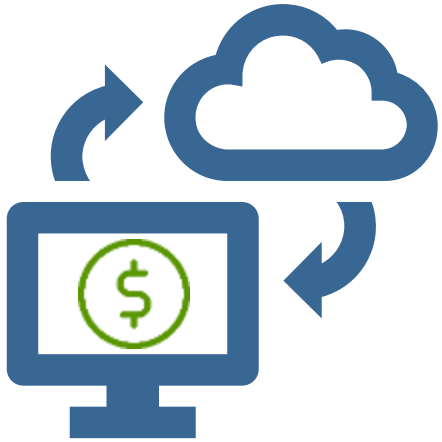
Source: *CMS Blanket Waiver*

Revenue Cycle Implications and Billing Guidance for Behavioral Health Providers

Revenue Cycle Implications and Billing Guidance

Providers can secure reimbursement and avoid billing issues by using appropriate codes and modifiers, supported by proper documentation in the medical record.

Billing Guidance	
Adjusted Minimum Billing Threshold	Bill Medicaid for less frequent and reduced duration of contacts in accordance with adjusted expectations for select behavioral health services (see next slide for list of adjusted services and modifications)
Telehealth Billing	Bill appropriately for professional telehealth services
Modifiers	Use 95, GT and/or CR modifiers for Medicaid and Medicare, as applicable, to ensure smooth billing when exercising emergency flexibilities
Clinical Documentation	Ensure appropriate documentation of use of emergency flexibilities



Source: *OMH Guidance*

Billing Guidance for Clinic Treatment Programs

New York provided additional guidance to clinic programs.

Clinic Service*	CPT Codes	Minimum Time During COVID-19	Standard Minimum Time
Initial Assessment, Diagnostic and Treatment Plan	90791	No minimum time	45 minutes
Initial Assessment and Treatment Plan with Medical Treatment	90792	No minimum time	45 minutes
Office Visit –Established Patient	99212	10 minutes	15 minutes
Office Visit – New Patient	99201	10 minutes	15 minutes
Psychiatric Assessment - Add on with Office Visit	90833	30 minutes`	16-37 minutes
Psychiatric Assessment - Add on with Office Visit	90836	45 minutes	38-52 minutes
Psychotherapy	90832	30 minutes	16-37 minutes
Psychotherapy	90834	45 minutes	38-52 minutes
Psychotherapy - Family and Client	90847	60 minutes	50 minutes

Guidance for Medicare/Medicaid Dual Eligibles

- **Medicare-enrolled providers.** Providers must first bill Medicare for a service delivered through telehealth or telephone by a Medicare-enrolled provider to a dually eligible client using Medicare codes and instructions. If the claim is denied by Medicare, the provider should bill Medicaid using that same information.
  - When a provider submits the Medicare-required telephonic codes to Medicaid after a Medicare denial, Medicaid will pay using the in-person rates.
- **Non-Medicare covered providers**. Providers may bypass billing Medicare when the service has been provided by a practitioner not recognized by Medicare (e.g., LMSW, LCAT) using Medicaid codes and instructions

Source: *OMH Guidance*

Billing Guidance for Behavioral Health Providers

New York State Medicaid has eased minimum billing requirements for additional behavioral health services.

Service	Minimum Outreach During COVID-19	Billing Units During COVID-19	Standard Billing Units
Adult Home and Community Based Services (HCBS) and Recovery Coordination Services	✓ 1 (phone call, videocall, or face-to-face) visit at least once per week.	✓ Most HCBS: 5 minutes ✓ Educational and prevocational: 20 minutes	✓ Most HCBS: 15 minutes ✓ Educational and prevocational: 20 minutes
Assertive Community Treatment	✓ 1 (phone call, videocall, or face-to-face) visit at least once per week. ✓ Prescribers: 1 effort (telephone contact) per month	✓ At least 5 minutes per contact ✓ Full payment: At least 3 contacts per month ✓ Partial payment: 1-2 contacts per month	✓ At least 20 minutes per contact ✓ Full payment: At least 6 contacts per month ✓ Partial payment: 2-5 contacts per month
Adult Continuing Day and Child Day Treatment Programs	✓ 5 efforts (telephone) each week ✓ Medication management: 1 effort (telephone) per month	✓ Full day: If successful contact is at least 5 minutes ✓ Half day: If outreach efforts are unsuccessful and no contact has been made	✓ Full day: At least 4 hours ✓ Half day: At least 2 hours
Partial Hospitalization	✓ 5 efforts (telephone) each week	✓ 6 hour rate code for at least 5 minutes	✓ 4-7 hours ✓ Preadmission rate: 1-3 hours
Personalized Recovery Oriented Services (PROS)	✓ 2 efforts (telephone) each week	✓ Individual: 5 minutes ✓ Group: 15 minutes ✓ Tier 1: 1-3 contacts or at least 2 outreach efforts per month ✓ Tier 3: 4 contacts per month ✓ Add-ons can be billed	✓ Individual: 15 minutes ✓ Group: 30 minutes ✓ Tier 1: 2-12 units ✓ Tier 3: 28-43 units ✓ Add-ons can be billed

Provider Relief Fund

Provider Relief Fund

COVID-19 stimulus bills provide $175 billion in direct-to-provider funds, known as the Provider Relief Fund. Two distributions to date most directly impact NYC-based BH providers.

	Key Eligibility Criteria	Payment Methodology	How to Access Funds
General Distribution: *Tranche 1 ($30 B)*	Providers must: • Have billed Medicare Parts A or B in 2019; *and* • Provide or provided after January 31, 2020, diagnoses, testing, or care for individuals with possible or actual cases of COVID-19 (i.e., any patient)*	• Provider's share of total 2019 Medicare fee-for-service expenditures	• Automatic distributions occurred on April 10 and 17
General Distribution: *Tranche 2 ($20 B)*		• The *lesser* of 2% of a provider's 2018 (or most recent complete tax year) net patient revenue *or* the sum of incurred losses for March and April • If a provider received 2% of patient revenue or more from its Tranche 1 payment, it may not receive a Tranche 2 payment	• Automatic distributions occurred on April 24 for providers with cost report data on file (generally, hospitals) • For providers that received a Tranche 1 payment but did not automatically receive a Tranche 2 payment, applications were due June 3
Medicaid Distribution *(~$15 B)*	Providers must: • Have billed Medicaid between January 1, 2018 and December 31, 2019 • Have ***NOT*** received a General Distribution (Tranche 1 or 2) payment • Provided patient care after January 31 *Full eligibility criteria available in the Application Instructions*	• At least 2% of reported gross revenue from patient care	• **Submit application via the Enhanced Provider Relief Fund Portal by July 20 (*see Application Form*)** • **HHS may need to verify a provider's eligibility with the State Medicaid agency; we suggest submitting the application ASAP to expedite review**

HHS has indicated that providers locked out of this distribution that only received a small General Distribution payment "may be eligible for future allocations."

* HHS indicates in guidance that it "broadly views every patient as a possible case of COVID-19" and that "care does not have to be specific to treating COVID-19."

Source: *HHS Provider Relief Fund Press Releases, FAQs, and Application Information*

Thank You

For additional questions, please contact
COVIDProviderSupport@cityhall.nyc.gov

Appendices

Appendix: Key Federal Legislation & Executive Action

- **The CARES Act, enacted on March 27, 2020** (Manatt summary here, plus discussion here of changes to the "Part 2" SUD rules)
- **HHS Guidance on the Provider Relief Fund**
- **Section 1135 Waivers issued by the Department of Health & Human Services (HHS) and CMS**
  - CMS Webpage with New Waivers & Flexibilities for Health Care Providers
    - Full text of CMS blanket waivers (last updated June 5, 2020)
    - Manatt summary of CMS blanket waivers (as of April 2, 2020)
  - Manatt primer on the 1135 waiver authority
  - **CMS** Interim Final Rule effective May 8, 2020
- **Telehealth & HIPAA**
  - CMS fact sheet & FAQs re: telehealth & HIPAA (March 17, 2020)
  - Manatt summary of telehealth flexibilities (as of March 18, 2020)
  - OCR HIPAA guidance re: commonly used telehealth technologies (March 17, 2020)
  - OIG guidance on waiving cost sharing and providing free/discounted access to telehealth technology
  - Manatt summary of HIPAA waiver and OCR guidance (as of March 17, 2020)
- **Medicare Coverage and Billing**
  - CMS guidance: Medicare Fee-for-Service (FFS) Response to the Public Health Emergency on COVID-19, MLN Matters SE20011 (April 10, 2020)
  - CMS guidance: Medicare Advantage and Medicare Part D: CMS, Information Related to COVID-19 (Mar. 10, 2020)
  - CMS guidance: Physicians and Other Clinicians: CMS Flexibilities to Fight COVID-19
- **DEA/SAMHSA:** Telemedicine for Buprenorphine Guidance
- **DEA:**
  - Alternate Delivery of Medications for OUD Memo (March 16, 2020)
  - Use of Off-Site Location to Dispense Take Home Doses of Medications for OUD Guidance (April 7, 2020)
- **SAMHSA:**
  - "Part 2" SUD Rule Notice of Enforcement Discretion
  - Guidance for OTPs:
    - Guidance: Take-Home Doses Waiver
    - Guidance: Patients Quarantined At Home with the Coronavirus
    - FAQs: Provision of Methadone and Buprenorphine for the Treatment of Opioid Use Disorder in the COVID-19 Emergency

Appendix: Key State Executive Actions and Guidance

New York Executive Orders and Department of Health (DOH) Guidance, catalogued by Manatt here.

- **Executive Orders** may be renewed in 30-day increments, in accordance with N.Y. Executive Law § 29-a. The Governor has renewed all flexibilities until early July, except as expressly terminated or modified. Specifically, flexibilities in EO Nos. 202 through 202.14 until July 6, and all flexibilities in EO Nos. 202.15 through 202.29 until July 7.
  - Particularly relevant Executive Orders include:
    - No. 202 (March 7, 2020)
    - No. 202.1 (March 12, 2020)
    - No. 202.5 (March 18, 2020)
    - No. 202.10 (March 23, 2020)
    - No. 202.13 (March 30, 2020)
    - No. 202.15 (April 9, 2020)
    - No. 202.18 (April 16, 2020)

- **Medicaid Coverage Guidance**
  - Guidance regarding 1915(c) HCBS Children's Waiver for Children's Health Homes and Children, Youth Evaluation Services (C-YES), HCBS Providers, and MMCP/HIV SNP – March 29, 2020
  - Guidance for Designated Children and Family Treatment and Support Services' Providers – March 19, 2020
  - Adult Health Home Guidance – March 14, 2020

Appendix: Key State Executive Actions and Guidance

- **Medicaid Coverage Guidance**
  - OMH Guidance on COVID-19:
    - Consolidated Telemental Health Guidance – March 30, 2020
    - Program & Billing Guidance for Adult BH HCBS & RCA – April 16, 2020
    - Guidance for Children's RTF Documentation – April 13, 2020
    - Guidance Adult and Children's Residential Documentation – April 13, 2020
    - Guidance Clinic Treatment Programs Documentation – April 13, 2020
    - Guidance ACT Program and Billing– April 13, 2020
    - Guidance CDT Program and Billing – April 13, 2020
    - Guidance Children's Day Treatment Program and Billing – April 15, 2020
    - Guidance Partial Hospitalization Program and Billing– April 13, 2020
    - Guidance PROS Program and Billing – April 13, 2020
    - Guidance Interim Background Check– April 17, 2020
    - Guidance Interim Background Check Attestation – April 21, 2020
    - Guidance RTF Provider Treatment Planning Standards During COVID-19 Emergency– April 4, 2020
    - Guidance on Clozapine and Blood Test Monitoring – April 16, 2020
    - Guidance on Clinic Treatment Program Billing – April 28, 2020
    - FAQs on Disaster Emergency– April 16, 2020
    - Admissions and Continuity of Care Advisory – March 20, 2020
    - Self-Attestation of Compliance to Offer Telemental Health Services – March 30, 2020
    - FY2019 CFR Extension Memo– March 18, 2020
    - Temporary Amendment to OMH Part 524 Deadlines– June 5, 2020
  - OASAS Guidance on COVID-19:
    - Guidance Interim Background Check– April 10, 2020
    - Guidance on DEA Telephone Induction of Buprenorphine– March 30, 2020
    - Guidance on Telepractice and Patient Confidentiality– March 30, 2020
    - Guidance on Regulatory Relief for Providers– March 30, 2020
    - Guidance and FAQs for OTPs– March 23, 2020
  - For background, see CMS guidance: Coverage and Benefits Related to COVID-19 Medicaid and CHIP

Appendix: Key State Executive Actions and Guidance

- **Medicaid Coverage Guidance**
  - OASAS Guidance on COVID-19:
    - Guidance Interim Background Check– April 10, 2020
    - Guidance on DEA Telephone Induction of Buprenorphine– March 30, 2020
    - Guidance on Telepractice and Patient Confidentiality– March 30, 2020
    - Guidance on Regulatory Relief for Providers– March 30, 2020
    - Guidance and FAQs for OTPs– March 23, 2020
  - For background, see CMS guidance: Coverage and Benefits Related to COVID-19 Medicaid and CHIP

Appendix: Telehealth Overview

The following elements are necessary for behavioral health providers to deliver services through telehealth

Sufficient capacity of eligible providers who can receive reimbursement for telehealth services

Telehealth technology infrastructure that conforms with state and federal rules, including new flexibility under emergency declaration

Financial and/or technical support for some practices to make the conversion to telehealth (e.g., small practices)

Clear privacy and security guidance for providers to navigate HIPAA, Part 2 and other information sharing rules

Aligned Medicaid service codes and payment rates to take advantage of maximum flexibility allowed under federal guidance

Updated workflows and protocols to take advantage of new medications for OUD-specific flexibility

Appendix: Telehealth

New York Executive Orders and Medicaid guidance extend the types of providers and the behavioral services that can be delivered through telehealth.

State Executive Order Text
[Waiver] to allow additional telehealth provider categories and modalities, to permit other types of practitioners to deliver services within their scopes of practice and to authorize the use of certain technologies for the delivery of health care services to established patients, pursuant to such limitations as the commissioners of such agencies may determine appropriate. [EO 202.1]
State Guidance Text
[Waiver] to permit providers to deliver any service appropriate for individuals to receive via telemental health. If a recipient has a service need that cannot be met via telemental health, it is the expectation that the agency will still ensure an individual's needs are met. [OMH Consolidated Telemental Guidance]

Appendix: Flexibilities for Medications for OUD

Federal and state flexibilities permit providers to prescribe and dispense buprenorphine and methadone for OUD in alternate locations.

Issue	Federal Waiver Text
Telephone Prescribing of Buprenorphine	[Waiver] to allow practitioners to prescribe buprenorphine to new and existing patients with OUD via telephone by otherwise authorized practitioners without requiring such practitioners to first conduct an examination of the patient in person or via telemedicine. [DEA and SAMHSA Guidance]
Off-Site Location for Dispensing Take Home Doses of Medication for OUD	[Waiver] to allow permit OTPs to regularly use off-site locations located in the same state in which the OTP is registered with DEA to deliver take-home doses of methadone to their patients without separately registering those locations subject to limitations. [DEA Guidance]
Alternate Delivery and Pick-Up Arrangements for OTPs	[Waiver] to permit OTPs to make "doorstep" deliveries of take-home medication in an approved lock-box and to allow for the delivery of the medications may be conducted by an authorized OTP staff member, law enforcement officer, or national guard personnel. [DEA Guidance]
Issue	**State Guidance Text**
Take Home Doses and Alternate Delivery of Methadone	All OTPs will be instructed to submit an email, delineating the specific take home procedures for your OTP for NY SOTA review and approval. All OTPs should include, in their agency-wide blanket regulatory waiver request, details regarding how the OTP will assess whether a responsible adult can serve as a designated other or surrogate to pick up an OTP patient's medication and responsibly dispense the drug to the patient. [OASAS OTP Q&A 2.0]

Appendix: Federal and State Practitioner Flexibilities

Federal: CMS Blanket Waivers	
Waived Rule	**Blanket Waiver Text**
Physician services 42 CFR 482.12(c)	CMS is waiving [the requirement] that Medicare patients be under the care of a physician. This allows hospitals to use other practitioners, such as physician's assistant and nurse practitioners to the fullest extent possible[, as long as this flexibility is] not inconsistent with a state's emergency preparedness or pandemic plan.
In-state licensure (Various)	[CMS is] waiving requirements that out-of-state practitioners be licensed in the state where they are providing services when they are licensed in another state [if the practitioner is enrolled in the Medicare program, possesses a valid license to practice in another state, and] is not affirmatively excluded from practice in [any] state.

State: Executive Orders	
Issue	**Executive Order Text**
Out-of-state licensure Physician, PA, RPN, LPN, NP, radiologic technologist, respiratory therapist, mental health counselor, marriage and family therapist, creative arts therapist, and psychoanalyst	[Waiver] to allow [practitioners] licensed and in current good standing in any state in the United States to practice medicine in New York State without civil or criminal penalty related to lack of licensure. *(EO Nos. 202.5, 202.10, 202.15., 202.18)*
NY license, but not registered Physician, PA, RPN, LPN, NP, radiologic technologist	[Waiver] to allow [practitioners] licensed and in current good standing in New York State but not registered in New York State to practice in New York State without civil or criminal penalty related to lack of registration. *(EO Nos. 202.5, 202.10.)*

Appendix: Practitioner Flexibilities (State)

NY Executive Orders and guidance modify various requirements for privileging, background checks, scope of practice, and practitioner supervision under NY state law.

Issue	Executive Order Text
Medical staff privileging	[Waiver] to allow staff with the necessary professional competency and who are privileged and credentialed to work in a facility in compliance with such section of the Public Health Law and such sections of the NYCRR, or who are privileged and credentialed to work in a facility in another state in compliance with the applicable laws and regulations of that other state, to practice in a facility in New York State. *(EO No. 202.5)*
Supervision requirements PA, specialist assistant, NP	[Waiver] to permit a [practitioner] to provide medical services appropriate to their education, training and experience without oversight from a supervising physician [for PAs and specialist assistants, or] without a written practice agreement, or collaborative relationship with a physician [for NPs]. *(EO No. 202.10)*
Background Check	[Waiver] to allow current employees of OPWDD, OCFS, OMH and OASAS regulated programs or providers who have undergone background checks to work to be approved by a different agency regulated provider without undergoing another background check. (EO No. 202.18)

Issue	Guidance Text
Credentialing	[OASAS] will hold on the expiration date for all credentials including the CASAC-Trainee effective March 17, 2020. (OASAS Guidance on Provider Regulatory Relief)
Scope of Practice	[Waiver] to permit individuals with a CASAC-T to act as Qualified Health Professionals (QHP) and individuals who are provisional QHPs to act as QHPs. (OASAS Guidance on Provider Regulatory Relief)
Program Certification	[OASAS] will suspend program recertification reviews of regulated providers. (OASAS Guidance on Provider Regulatory Relief)

Appendix: Administrative Flexibilities (Confidentiality)

Federal waivers and notices of enforcement discretion relax certain confidentiality requirements.

Waived Rule	Statutory/Blanket Waiver Text
Medical Emergency Rule for SUD Info (under "Part 2") 42 C.F.R. Part 2	Patient identifying information may be disclosed by a part 2 program or other lawful holder to medical personnel, without patient consent, to the extent necessary to meet a bona fide medical emergency in which the patient's prior informed consent cannot be obtained. Information disclosed to the medical personnel who are treating such a medical emergency may be re-disclosed by such personnel for treatment purposes as needed. We note that Part 2 requires programs to document certain information in their records after a disclosure is made pursuant to the medical emergency exception. [SAMHSA] emphasizes that, under the medical emergency exception, providers make their own determinations whether a bona fide medical emergency exists for purposes of providing needed treatment to patients. [SAMHSA 42 CFR Part 2 Guidance]
"Reauthorization" requirement for SUD Info (under "Part 2") 42 C.F.R. Part 2 *[Not yet effective]*	Once prior written consent of the patient has been obtained [for disclosure of information related to care for substance use disorder], such contents may be used or disclosed by a covered entity, business associate, or a program…for purposes of treatment, payment, and health care operations as permitted by the HIPAA regulations. Any information so disclosed may then be redisclosed in accordance with the HIPAA regulations… until such time as the patient revokes such consent in writing. CARES Act § 3221(b). *[Note: HHS has not yet taken action to implement this statutory change. Once HHS does, however, the statutory change will be in effect permanently; unlike the other changes discussed in this presentation, the change to Part 2 rules is not limited to the federally declared emergency period.]*
OCR Notice of Enforcement Discretion	[OCR] will exercise its enforcement discretion and will waive potential penalties for HIPAA violations against health care providers that serve patients through everyday communications technologies during the COVID-19 nationwide public health emergency. [OCR Guidance]

Appendix: Administrative Flexibilities (Documentation)

State guidance relaxes documentation requirements for many behavioral health services and extends submission window for fiscal reporting

Issue	State Guidance
Treatment Plan	Medicaid has suspended requirements related to timing for completing initial assessments and treatment plans, as well as updating and reviewing treatment plans for the following services: • Adult and children residential programs • Children's residential treatment facilities • Clinic treatment programs • Behavioral health HCBS and RCA services • ACT services • CDT services • Children's day treatment services • Partial hospitalization services • PROS services
Fiscal Reporting	FY2019 consolidated fiscal reports to OMH and OASAS are due by August 1, 2020
Incident Reporting	Investigative findings for Allegations of Abuse or Neglect and Significant Incidents, as well as the hold Incident Review Committee (IRC) meetings, are temporarily extended from 45 to 60 days following the initial report of the incident

Appendix: Billing Guidance

Issue	Billing Guidance
Modifiers for emergency flexibilities	
Medicare	When billing for services that relied on 1135 waivers, use the condition code "DR" (disaster related) for institutional billing (form CMS-1450), and the modifier "CR" (catastrophe/disaster related) for non-telehealth Part B billing, both institutional and non-institutional (form CMS-1500). When waiving cost sharing for Part B claims, use the modifier "CS" to bill Medicare for the full claim amount.
Telehealth	
Medicare	Code Place of Service (POS) as if the service was furnished in-person. Use Modifier "95" to indicate the use of telehealth. The CR modifier is not necessary for telehealth services. There are no billing changes for institutional claims.
Medicaid	OMH has provided detailed billing guidance for both telehealth and telephonic services.
Adjusted Minimum Billing Thresholds	
Medicaid	OMH has adjusted minimum billing thresholds (e.g., units of service and numbers of contacts) for the following services: • Clinic treatment programs • Behavioral health HCBS and RCA services • ACT services • CDT services • Children's day treatment services • Partial hospitalization services • PROS services