



May 12, 2021

## **COVID-19 Regulatory Relief and Program Guidance for OASAS Certified Programs**

On **March 13, 2020**, the Secretary of the US Department of Health and Human Services, based on the presidential proclamation of the COVID-19 Outbreak Emergency, waived and modified certain requirements of **Titles XVIII, XIX, and XXI of the Social Security Act** to allow for provision of sufficient health care services to meet the needs of individuals during the pandemic. The waiver allowed for adjustments to service provision, regulatory compliance, and reimbursement to address the unique circumstances presented by the pandemic.

**State Plan Amendment 20-48** which was approved on **May 12, 2021** allows for the regulatory relief that is discussed in this document and includes specific changes to documentation, staffing requirements, as well as service delivery relief. All elements of this relief are **retroactive to March 1, 2020**. The emergency period will terminate, and this state plan provision will no longer be in effect, upon termination of the public health emergency, including any extensions.

Along with the Federal Waiver, **NYS Executive Order 202**, provided that rules and regulations that hinder or delay action necessary to cope with the emergency were temporarily suspended. Accordingly, [OASAS announced on March 9, 2020](#), that the Part 830 Telepractice Regulations were being modified to meet the emergency including expansion of staff allowed to provide services via Telepractice, and the method of Telepractice delivery. Full documents regarding these waivers and announcements can be found on the [OASAS Website COVID 19 Guidance Page](#).

Questions regarding this information may be directed to [Legal@oasas.ny.gov](mailto:Legal@oasas.ny.gov) and [PICM@oasas.ny.gov](mailto:PICM@oasas.ny.gov).



## I. Essential Services

During the COVID-19 public health emergency, specific services should be prioritized as essential, to include:

- **Admission** to all certified programs.
- **Counseling.** Individual, group, family, collateral, and significant other counseling services.
- **Medication Assisted Treatment.** Assessment, prescription, delivery, dispensing, injection, and Buprenorphine initiation is allowable via Telepractice and telephone. Opioid Treatment Programs should see [OASAS OTP COVID FAQs](#).
- **Peer Advocate Services.** Peer support, outreach, and engagement, to the extent possible, can be provided utilizing Telepractice and telephone capability.

## II. Regulatory Flexibility and Waivers

OASAS Certified Programs **are expected** to comply to the extent possible with all regulatory requirements. When regulatory requirements cannot reasonably be met

Providers:

- **Must** maintain documentation as to why they cannot meet regulatory requirements when utilizing the regulatory relief contained herein.
- **Shall** keep a record of why and how they are utilizing regulatory relief and must also note in the patient record as reasonable and appropriate.
- Are **expected** to generally document that flexibilities are occurring with an individual due to the COVID-19 emergency. Providers need not note every time a service is delivered utilizing regulatory flexibility.

### Staffing

All program staff must deliver services consistent with their [Scope of Practice](#).

OASAS hereby waives and modifies specific staff to patient ratios required by regulation in all programs.

Programs:

- **Must** provide sufficient staff to cover all required shifts and to **ensure** patient safety.

- Are **expected** to exercise multiple options to maintain full staffing, including looking system wide, utilizing networking resources to identify recently furloughed staff etc.
- Are **encouraged** to collaborate with one another to discuss potential staff sharing capabilities as appropriate / practical.

Additionally, programs **must** work with Regional Office Staff to keep them informed of staffing problems as they arise.

### **Utilization Review**

For the duration of the COVID-19 State of Emergency Order, providers may suspend **internal** written utilization review procedures as required by OASAS regulations until the order is removed.

Providers are expected to continue documenting clinical necessity and appropriateness for level of care in the individual's case record.

[Insurance Circular Letter No. 8](#), suspends prior authorization and concurrent review for **Article 28** Hospital based programs during the COVID-19 Emergency.

**Article 32** Freestanding Programs **must**, unless otherwise notified by insurers, continue the authorization and concurrent review process.

Program specific guidance:

- [COVID-19 Guidance for Outpatient Programs](#)
- [COVID-19 OTP Guidance and FAQ's](#)
- [Admissions and Continued Stay Guidance for Inpatient and Residential Programs](#)

### **General Documentation and Regulatory Compliance**

Programs to some extent, should be able to access, maintain and update their electronic medical records (EMR) and other records. Absent that capability, programs should maintain documentation standards as best as possible related to services rendered including but not limited to service recipient, date, type and duration of services, practitioner levels, relation to treatment goals, etc.

### **Level of Care for Alcohol and Drug Treatment Referral (LOCADTR)**

Programs should continue to complete the LOCADTR 3.0, which is accessible from any electronic device.

## **Treatment Planning**

Treatment/Recovery Plans should continue to be developed in collaboration with the individual based on their specified needs. Collaboration can be documented in progress notes as well as any determination of goals and objective.

Formal treatment/recovery plan updates are not required. Providers must document through progress notes the services delivered and the need for additional and / or changes in services (e.g. more individual sessions or client declination of service participation e.g. not comfortable doing groups telephonically) outlined in the treatment/recovery plan.

Treatment/Recovery Plans should continue to be signed either physically or electronically by appropriate level of staff as given in the program's operating regulations. Treatment Plan reviews, if conducted should also be signed by appropriate required staff.

## **Consent for Release of Information**

Federal Confidentiality Rule, **42 CFR Part 2**, *requires* that Providers obtain **written** consent for release of information from individuals prior to releasing their information to another entity. 42 CFR does allow for some exceptions to this requirement including one specifically based on **medical emergency**. What constitutes an emergency is within the discretion on the provider.

OASAS recognizes that during the COVID Emergency providers may have difficulty obtaining written consents to release patient information. Providers need to carefully consider the particular situation the individual is experiencing and whether they believe it constitutes a medical emergency and the need to disclose this information.

**SAMHSA's: [COVID-19 Public Health Emergency Response and 42 CFR Part 2 Guidance](#)** provides information regarding exceptions based on a **medical emergency**, along with the steps providers will need to take in documenting this information.

**Informed Consent**, the acceptance of treatment services in general, or treatment services delivered via Telepractice **should be written**. However, Providers may still obtain verbal informed consent to engage in treatment and/or Telepractice when it is not possible to obtain written informed consent. Verbal informed consents should be documented in the treatment record. Providers should still obtain written consent for services that were delivered via verbal consent as soon as practical.

## **Space Configuration in Residential and Inpatient Settings**

To the extent practicable, residential and inpatient settings shall follow all regulatory requirements. Where programs need to make modifications based on the need to

isolate or quarantine patients due to COVID-19, programs must maintain a record of why, how and the length of time regulatory space configuration cannot be met.

### III. Reduction in Minimum Billing Requirements

For the COVID-19 state of emergency, the following minimum requirements must be met for service delivery to submit claims to Medicaid Fee-For-Service and Medicaid Managed Care. These changes remain in effect until the end of the state of emergency, unless otherwise noted, or as advised in subsequent guidance.

**Outpatient and Opioid Treatment Program** reimbursement is being adjusted as follows:

- **Telepractice being delivered by Telephone:**
  - Delivered service **can be** a minimum of five (5) minutes to count as one billable service:
    - **Screening**
    - **Brief Intervention**
    - **Admission Assessment Brief**
    - **Brief Treatment**
    - **Family Services**
    - **Peer Support Services**
    - **Medication Administration and Observation**
    - **Medication Management<sup>1</sup>**
    - **Addiction Medication Induction**
    - **Complex Care Coordination**
    - **Smoking Cessation**
  - Delivered service **can be** a minimum of fifteen (15) minutes to count as one billable service:
    - **Individual Counseling Brief**
    - **Group Counseling**

<sup>1</sup> Medication Management/Physical Health Services have no set minimum service duration. These services utilize an E&M code range, i.e. 99201-05 for existing patients, 99211-15 for existing patients. Unless otherwise indicated, the codes are listed based on the complexity of the service and the time needed to provide it.

- **Telepractice all deliver modes:**  
Minimum time periods for service delivery are hereby reduced by 25%.

- **In Person:**  
Minimum time periods for service delivery are reduced by 25% from **March 1, 2020 until July 15, 2021.**

## Outpatient Rehabilitation Services

- **Outpatient Rehab<sup>1,2</sup> ½ day: 1.5 hours**
- **Outpatient Rehab<sup>1,2</sup> full day: 3.0 hours**

<sup>1</sup> **From March 1, 2020 – June 30, 2021** a 15 minute telephonic or 19 minute other method Individual Counseling or a 15 minute Telephonic Group or 45 minute other method Group Counseling Session must be included in the ½ day, full day, service.

<sup>2</sup> **Effective July 1, 2021** Individual Counseling of a minimum 19 minutes and Groups minimum of 50 minutes must be included in the **In-Person** ½ day, full day, service.

## Outpatient Programs

Service	Procedure Code	Standard Minimum Time	Telephonic Only Minimum	25% Reduction/Rounding Allowance
Screening	H0049	15	5	11
Brief Intervention	H0050	15	5	11
Smoking Cessation Brief	99406	3	NA	2
Smoking Cessation Brief	99407	11	5	8
Assessment Brief	T1023	15	5	11
Assessment Normative	H0001	30	NA	23
Assessment Extended	H0002/90791	75	NA	56
Individual Counseling Brief	G0396/90832	25	15	19
Individual Counseling Normative	G0397/90834	45	NA	34
Brief Treatment	H0004	15	5	11
Group Counseling	H0005/90853	60	15	45
Multi-Family Group	90849	60	15	45

Service	Procedure Code	Standard Minimum Time	Telephonic Only Minimum	25% Reduction/Rounding Allowance
Family Services w/o patient	T1006/90846	30	5	23
Family Services w/patient	90847	30	5	23
Peer Advocate Service	H0038	15	5	11
Intensive Outpatient Services	S9840	180	NA	135
Outpatient Rehab ½ day	H2001	120	NA	90
Outpatient Rehab full day	H2036	240	NA	180
OTP COVID Bundle Rate	G2067	SEE EXAMPLE BELOW		
Psychiatric Assessment Brief	99201-05 99211-15 with add on 90833	30	5	23
Psychiatric Assessment	99201-05 99211-15 with add on 90836	45	NA	34
Medication Admin/Observation Buprenorphine	H0033	NA	NA	NA
Medication Admin/Observation Methadone	H0033	NA	NA	NA
Medication Management	99201-05 99211-15	NA	NA	NA
Addiction Medication Induction	H0014	NA	NA	NA
Complex Care Coordination	90882	45	NA	34
Physical Health	99201-05 99211-15	NA	NA	NA
Physical Exam	99201-05 99211-15	NA	NA	NA

**OTP Example:**

Delivery	Rate Code <sup>1</sup>	Procedure Code	Reimbursement Current	Service Options <sup>2</sup>	Time Minimum Now	Time Minimum Waiver	Reimbursement Waiver
Telephonic	7969 7973	G2067	\$207.49	Individual Counseling Brief	25	15	\$207.49
				Group Counseling	60	15	\$258.47
	7971 7975		\$258.47	Peer Advocate Service	15	5	
Telepractice other/in-person	7969 7973	G2067	\$207.49	Individual Counseling Brief	25	19	\$207.49
				Group Counseling	60	45	\$258.47
	7971 7975		\$258.47	Peer Advocate Service	15	11	

<sup>1</sup> Option 2 OTP Service Delivered via Telepractice

<sup>2</sup> These are examples and not inclusive of the total services available for reimbursement.

**Residential Settings:**

Residential Addiction providers are authorized to deliver rehabilitative services to individuals in a variety of settings in the community who have been discharged from the residential setting or were not admitted due to adjustments to programs necessitated by the emergency. Rehabilitative Services must consult appropriate [COVID-19 Guidance](#) for specific service delivery and billing exceptions.