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Continuing COVID Regulatory Flexibility

OASAS has been extending regulatory flexibilities since June 2021, and at this time, most COVID-related flexibilities have ended. This guidance will address the flexibilities that have ended, those that are reliant upon the Federal Public Health Emergency, and the few continuing COVID-related flexibilities for OASAS programs.

Telehealth Flexibilities

OASAS permanently adopted most COVID-related telehealth flexibilities in February 2022.

- 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: allowance of a Telepractice Attestation rather than a waiver expires on 4/30/2022.
 - 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. Minimum time requirements for service delivery via telehealth has been extended for an additional 90 days until July 20th, 2022.

- Buprenorphine Induction Via Telehealth and Telephone-Only: The national Public Health Emergency declared by the U.S. Department of Health and Human Services (HHS) has been extended and is currently set to expire on July 15, 2022 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) issued an emergency regulation, filed on March 22, 2022, 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 has continued, providers may:
 - Utilize certain video-conferencing technologies, even if not fully compliant with HIPAA rules. While allowable, providers are *strongly* encouraged to implement HIPAA compliant 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.

Any Additional questions may be directed to PICM@oasas.ny.gov or Legal@oasas.ny.gov.