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## Continuing COVID Regulatory Flexibility

OASAS has been extending regulatory flexibilities since June 2021, and at this time OASAS COVID-related flexibilities have ended. This brief guidance will address the flexibilities that have ended, those that are reliant upon the Federal Public Health Emergency (which now ends on April 11<sup>th</sup>, 2023), and the few continuing COVID-related flexibilities for OASAS programs.

OASAS permanently adopted *most* COVID-related telehealth flexibilities in February 2022-those remaining flexibilities not addressed by the regulation continue to be extended through the end of the Federal Public Health Emergency. The Federal Government has agreed to provide states with a 60 day notice if the Public Health Emergency is not going to be extended again-in the event that we receive this notice it will be communicated immediately to providers.

## Telehealth Flexibilities

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

However,

- 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. **OASAS will continue to extend minimum time requirements for service delivery via telehealth has been extended until the end of the Federal Public Health Emergency (4/11/2023).** At this time- this is the only regulatory flexibility that continues to be waiver by OASAS separate from the Federal Public Health Emergency.
- 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 April 11, 2023** 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, and will become permanent before the end of 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.

### **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](mailto:PICM@oasas.ny.gov) or [Legal@oasas.ny.gov](mailto:Legal@oasas.ny.gov).