

Changes in HCBS Programs in Response to COVID-19

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May 12, 2020

Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Key Lessons

- Medicaid emergency authorities offer states many options to address needs during COVID-19 pandemic
- CMS is approving broad changes to states' HCBS programs, including
 - Eliminating many procedural requirements
 - Authorizing remote provision of services
 - Eliminating or significantly modifying provider qualifications
 - Increasing payment rates, and expanding provider reimbursement

Medicaid Provisions in COVID Legislation

- Families First Coronavirus Response Act
 - Enacted March 18, 2020
- Section 6004 of legislation adds optional Medicaid eligibility group
 - Covers testing for COVID-19 for otherwise uninsured persons
 - No resource or income requirements
 - No cost sharing
 - Federal government pays 100% of cost

6.2% Increase in Federal Share of Medicaid Costs

- **Four conditions on states:**
 - Maintenance of Effort: don't increase stringency of any "eligibility standards, methodologies, or procedures"
 - No increase in premiums
 - No cost sharing for COVID-19 testing or treatment
 - Continuous coverage – individuals maintain eligibility
 - See Section 6008 of legislation

Continuous Coverage Applies to Eligibility

- If enrolled, “shall be treated as eligible for such benefits through the end of the month in which such emergency period ends.”
 - Even if level of care changes
 - Even if failure to pay cost sharing
 - BUT may be provided with fewer home and community-based services, since this does not alter eligibility
 - See Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127 Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136 Frequently Asked Questions (FAQs), ## 25-26; COVID-19 Frequently Asked Questions (FAQs) for State Medicaid and Children’s Health Insurance Program (CHIP) Agencies, ## pp. 25-26.

CARES Act “Extenders”

- Coronavirus Aid, Relief, and Economic Security Act
 - Enacted March 27, 2020
- Extension through November 30, 2020 for:
 - Money Follows the Person program (assisting transitions from nursing facilities to community-based settings)
 - Protections against spousal impoverishment for Medicaid home and community-based services programs

Non-Emergency Mechanisms for Change

- Section 1115 demonstration waivers
 - Either modifying existing demonstrations, or initiating new demonstrations
 - Should have a pro-beneficiary, experimental purpose – consumer advocates don't want demonstration waivers to be vehicle to chip away on Medicaid consumer protections
- State Plan Amendments
 - Modifying procedures for state plan services, subject to existing statutory requirements

Medicaid State Plan Amendments

- For example:
 - Cover optional eligibility group for COVID-19 testing
 - Allow telehealth service delivery
 - Increase provider rates
 - Increase resource limits
 - Increase length of Medicaid-funded bed holds in nursing facilities
 - Allow 90-day supply of medications

We Are In an Emergency

- HHS Secretary Azar declares public health emergency, effective on January 27, 2020
 - Renewed effective April 26
- President Trump issues Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19), effective March 1
 - Includes authorization for HHS to use Section 1135 of the Social Security Act (42 U.S.C. 1320b-5) to temporarily waive or modify Medicare and Medicaid requirements

Section 1135 Waivers

- Specific to emergencies
- Used by CMS to make significant modifications, even though statute by its terms applies more narrowly, i.e., waiver of conditions of participation for providers

Broad Section 1135 Waivers

- For example:
 - Allow reimbursement to out-of-state providers
 - Allow services to be provided to alternative settings, such as unlicensed facilities
 - Allow managed care enrollees to obtain fair hearing directly, without first pursuing appeal with health plan
 - Extend deadlines to request fair hearings

HCBS Waivers

- Authorized by Section 1915(c) of the Social Security Act
 - Aka Section 1396n(c) of Title 42 of the United States Code
- Allows state to provide home and community-based as an alternative to institutional care (usually nursing facility care)
 - Medicaid beneficiary must be assessed to need nursing-facility level of care
 - Must be budget neutral to Medicaid program

Emergency Changes to HCBS Waivers

- Appendix K
 - CMS Form used to make changes in HCBS waivers
 - Changes are allowable under Section 1915(c), ... but many likely would not have been sought or approved, e.g., eliminating provider prerequisites

Appendix K

- Appendix K Categories:
 - Access & Eligibility
 - Services
 - Permit Payment to Family Members
 - Provider Qualifications
 - Level of Care Evaluations/Re-assessments
 - Rates – Increased Payments and Retainers
 - Service Plans
 - Settings
 - Support during Acute Hospitalizations
 - Appendix K Addendum

Access & Eligibility

- Increase Individual Cost Limits
 - CT – Increase cost limit for current beneficiaries if needed to avoid institutionalization
 - NC – Exceed cost neutrality per waiver entry
- Modify Targeting Criteria
 - KS – Remove requirement to use one service every 30 days
 - NC – Beneficiary will not be subject to discharge if they cannot comply with plan of care

Services (1 of 3)

- Settings
 - Allow services in alternative settings
 - Hotels, shelters, schools, communal residences, or out-of-state settings
 - Waive rules so that visitation can be prohibited
- Remote Services
 - Expand telehealth
 - Waiver services provided remotely
 - Adult day services, wellness monitoring, care coordination

Services (2 of 3)

- Nutrition
 - Expand home delivered meals
 - Up to two home delivered meals daily
 - Allow meals to be provided through restaurant delivery services
 - Additional case of monthly nutritional supplements
 - Waive dietary guidelines for home delivered meals
- Specialized Equipment, Supplies, PPE
 - Authorizing payments for PPE
 - Specialized medical equipment and assistive technologies to improve ADLs

Services (3 of 3)

- Additional Services
 - Allow increase in number of hours or units for specific services
 - Authorize in-home services
 - Extend respite services
 - Non-medical transportation to obtain food and other necessities
 - Payment for social and emotional supports

Family Caregivers

- Payments to family members or legally responsible persons
- Alter certain requirements for family members
 - Waive or delay background checks
 - Waive or delay certifications for CPR or First Aid
 - Allow training and certification to be completed remotely

Provider Qualifications

- Certification and Licensing
 - Waive or modify training requirements
 - Extend renewals for provider certifications due otherwise to expire
 - Allow services through un-enrolled entities
 - Non-medical transport (Uber, Lyft), home delivered meals
 - Out of state providers
- Remote Access
 - Allow remote or online training for direct service staff and case managers

Level of Care Evaluations

- Remote assessments and reassessments
 - Telephonically or through video conferencing
- Extend level of care determinations
 - Typically up to one year
- Delay or postpone reassessments
 - Extensions vary from 60 days to six months

Increased Rate Payment

- Rate Increases
 - Variability in rate increases, from 8% up to 50%
 - May vary based on geographic area or circumstance (e.g., quarantine)
 - Some increased rates for institutional respite services, financial management

Person-Centered Service Plans

- Modifications to Service Plans
 - Remote case management/service planning
 - Extend service plans (otherwise set to expire) for up to one year
 - Beneficiary and service providers consent
 - May not require input of entire person-centered service team
 - Modify plan to include additional supports in response to COVID-19

Incident Reporting Requirements

- Extend deadlines to submit CMS reports
 - Vary from 30 days to 120 days
- Require reporting of COVID-19 positive cases
- Allow remote reporting and monitoring

Payments During Hospitalizations

- Several states allow for payments to support the beneficiary during an acute care hospitalization or short-term institutional stay
- Typically limited in duration and to necessary services not available in the acute setting

Retainer Payments

- Several states allow retainer payments to be made to a provider when beneficiary cannot receive services
 - Some states only allow payments when beneficiary is in quarantine or hospitalized
- Payment available up to 30 days, often less
 - AZ, CO, FL, GA, and UT limit payment to the lesser of the state bedhold authorization for nursing facilities or 30 days

Other Provisions

- Expand Opportunities for Self-Direction
 - Suspend screening requirements for immediate family members (KY)
 - Self-direction can include respite services (and medication administration and management if worker is a nurse) (FL)
- Other:
 - Retain eligibility even if no services received
 - Require monthly telephonic visits in lieu of face-to-face case management
 - Allow remote monitoring, meetings, and audits

Addendum: COVID-19 Response

- Waive Medicaid “settings” regulation that requires that HCBS settings be set up to integrate beneficiary with broader community
- Add electronic method of service delivery for services to be provided in the home setting
 - Case Management
 - Personal Care Services (verbal cueing only)
 - In-home habilitation
 - Monthly monitoring
 - Other

Addendum (2 of 3)

- Allow case management entities to provide direct services
- Provider qualifications
 - Allow spouses and parents of minor children to provide personal care services
 - Allow family member to be paid to render services
 - Allow other practitioners in lieu of approved providers
 - Modify service provides for home-delivered meals to allow for additional (or non-traditional) providers

Addendum (3 of 3)

- Processes
 - Allow an extension for reassessments and reevaluations for up to one year past the due date
 - Allow remote option for evaluations, assessments, and person-centered service planning
 - Adjust prior approval/authorization elements approved in the waiver
 - Adjust assessment requirements
 - Add electronic method of signing off on required documents

Questions



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