

MEMORANDUM

TO: All Behavioral Health Managed Care Organizations (BH-MCOs), Behavioral Health Providers Enrolled in the Medical Assistance (MA) Program and County Mental Health Authorities – Statewide

FROM: Kristen Houser 
Deputy Secretary
Office of Mental Health and Substance Abuse Services (OMHSAS)

RE: Temporary Suspension of Specified Regulatory Requirements for Inpatient Psychiatric Services, Outpatient Psychiatric Services, Intensive Behavioral Health Services, Outpatient Drug and Alcohol Services, Mental Health Procedures, Partial Hospitalization, Intensive Case Management, Psychiatric Rehabilitation Services, Community Residential Rehabilitation Services and Long-Term Structured Residences.

Impacted Chapters: 55 Pa. Code Chapters 1151, 1153, 1155, 1223, 5100, 5200, 5210, 5221, 5230, 5310, 5320, 5240

DATE: October 22, 2020

PURPOSE:

OMHSAS originally issued this memorandum on August 14, 2020, to inform BH-MCOs, County Mental Health/Intellectual Disability Offices and behavioral health providers that specified regulatory provisions in 55 Pa. Code Chapters 1151, 1153, 1155, 1223, 5100, 5200, 5210, 5221, 5230, 5310, 5320 and 5240 have been temporarily suspended during the COVID-19 disaster emergency declaration period.

This memorandum has been re-issued to update signature requirements for treatment and service plans. The original memorandum issued on August 14, 2020, required that signatures of individuals be obtained for treatment and service plans that were created or updated during the disaster emergency declaration period within 60 days after the end of the disaster emergency declaration period. This updated memorandum removes the requirement to obtain signatures within 60 days after the end of the disaster emergency declaration period. Requirements for obtaining verbal consent and documentation of the verbal consent remain and must be included in the medical record for every occurrence of a new and updated treatment plan. Providers are strongly encouraged to obtain signatures electronically when possible.

BACKGROUND:

Behavioral health providers in the Commonwealth provide a comprehensive array of critical mental health and substance use disorder services that facilitate recovery for adults and resiliency for children. These essential services are provided in a fashion that is reflective of the unique strengths and needs of each individual and is responsive to a dynamic and changing health care environment.

The 2019 novel coronavirus (COVID-19) pandemic has significantly impacted the ability of providers to effectively render services, and the workforce of available mental health and drug and alcohol professionals has diminished as a result of the pandemic.

On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency (the Disaster Proclamation), which was renewed for 90 days on June 3, 2020, to enable agencies to respond promptly to the pandemic. In the Disaster Proclamation, the Governor authorized suspension of regulations and regulatory statutes that would prevent, hinder or delay necessary action to cope with the COVID-19 emergency. Additionally, on May 6, 2020, Governor Wolf issued an order (Order Of The Governor of the Commonwealth of Pennsylvania to Enhance Protections for Health Care Professionals) to enhance protections for health care professionals, in which he also suspended multiple statutes and regulations, including several related to the provision of mental health services in the MA program. The order suspended regulations relating to the licensure and payment for Medicaid services to the extent that those provisions prevent the delivery of services using telehealth. The order also suspended regulations relating to Medicaid services that would prevent the use of licensed practitioners other than physicians to the extent allowed under state law, provided such use is consistent with federal regulations.

With the Governor's authorization as conferred in the of Disaster Proclamation issued on March 6, 2020, as renewed on June 3, 2020, and as directed in the Order to Enhance the Protections for Healthcare Professionals issued on May 6, 2020, specified regulatory provisions in 55 Pa. Code Chapters 1151, 1153, 1155, 1223, 5100, 5200, 5210, 5221, 5230, 5310, 5320, 5240 have been suspended.

TEMPORARY SUSPENSION OF REGULATORY PROVISIONS:

The temporary suspension of the specified regulatory provisions is intended to support the health and safety efforts of the agencies and facilities in protecting the individuals and families they serve, and their workforce, by affording providers the flexibility needed to focus on patient care in the most effective ways possible. The suspension supports the continued and uninterrupted delivery of behavioral health services in the face of the challenges created by the COVID-19 pandemic. The regulatory provisions that have been suspended address the following requirements for certain services:

- Timeframes for the completion of training and certification requirements for staff that provide certain services.
- Requirements for fire inspections and fire drills.
- Timeframes for assessments and treatment or service plan development and revisions.
- Timelines until which MA payments will be made to certain unlicensed providers.
- Requirements regarding living areas and other spaces in residential settings.
- Requirements regarding the right of individuals to receive visitors in a facility.
- Requirements pertaining to beneficiary signatures.
- Requirements regarding staff supervision.
- Requirements for staff-to-patient ratios.
- Requirements regarding the minimum hours of operation.
- Requirements regarding face-to-face interventions and services (thus allowing the use of telehealth).
- Requirements that only physicians can provide certain services (thus allowing other licensed practitioners to provide those services within their scope of practice).

Outlined below are the descriptions of the regulatory provisions that have been suspended, the scope of those suspensions and any binding conditions for the suspensions:

- For **Inpatient Psychiatric Services** under 55 Pa. Code Chapter 1151, DHS has suspended the requirement that a physician establish an individual written plan of care before authorization for payment for care provided to a recipient 21 years of age or older. A certified registered nurse practitioner or a physician assistant may substitute for the physician to perform this function, provided it is within their scope of practice.
- For **Intensive Behavioral Health Services (IBHS)** under 55 Pa. Code Chapter 1155, the Department of Human Services (DHS) has suspended the timelines until which MA payments will be made to an agency that is not licensed as an IBHS agency. DHS will continue to make MA payments until January 17, 2021, for IBHS services delivered by a Behavioral Health Rehabilitative Services (BHRS) agency that had an outpatient psychiatric clinic, a psychiatric partial hospitalization program or a family-based mental health license as of October 19, 2019, as long as the agency otherwise complies with Chapters 1155 and 5240. Similarly, payment will be made until January 17, 2021, to an agency that was approved to provide BHRS as of October 19, 2019, and otherwise complies with Chapters 1155 and 5240. Payment will also be made until October 15, 2020, to an agency that was approved to provide Applied Behavioral Analysis (ABA) services as of October 19, 2019, and otherwise complies with Chapters 1155 and 5240. DHS has also suspended other IBHS requirements under 55 Pa. Code Chapters 1155 and 5240. Assessments for group services may be completed within 30 days of initiation of service instead of 15 days, and Individual Treatment Plans (ITPs) within 45 days, instead of 30 days. For ABA Services, assessments may be completed within 60 days instead of 30 days, and ITPs within 75 days instead of 45 days. Signature requirements, including signatures for service plans and written consent, have also been suspended. Verbal consent must be documented in the medical record at the time of service and providers are strongly encouraged to obtain signatures electronically when possible. Additionally, providers that deliver services through telehealth must comply with the federal Department of Health and Human Services Office of Civil Rights (OCR) guidance regarding compliance with the Health Insurance Portability and Accountability Act (HIPAA) as outlined in <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>. The requirement that the written order for services be based on a face-to face interaction with the child, youth or young adult is suspended; the method of contact for obtaining a written order may include telehealth. Similarly, method of contact for assessment may include telehealth.

- For MA payment for **Outpatient Drug and Alcohol services** provided in accordance with 55 Pa. Code Chapter 1223, DHS will allow up to 60 days of intake to complete the Initial Treatment Plans instead of 15 days. The requirement that MA payment will not be made for clinic services conducted over the telephone is also suspended. These services may be provided via telehealth/telephone if clinically appropriate to do so.
- **Mental Health Procedures** under 55 Pa. Code Chapter 5100: The right of individuals to have visitors of their own choice in-person has been suspended. The provider must however facilitate other means of visitation using audio-video technology.
- **Psychiatric Outpatient Clinics** licensed under 55 Pa. Code Chapter 5200 will have 90 additional days, after the currently required 180 days, to update treatment plans that are created after the Disaster Proclamation was issued on March 6, 2020. DHS has suspended the maximum percentage limit on psychiatric time that can be provided via telehealth, allowing 100% of psychiatric services delivered via telehealth, if clinically appropriate to do so. DHS has also suspended the MA program requirement in 55 Pa. Code 1153.52 that a psychiatrist shall be present in the psychiatric outpatient clinic outpatient facility to perform or supervise the performance of all covered services provided to MA beneficiaries. The psychiatrist may instead perform or supervise the services via telehealth if clinically appropriate to do so. The requirement in 55 Pa. Code 1153.14 that MA payment will not be made for a covered psychiatric outpatient clinic or Mobile Mental Health Treatment conducted over the telephone is also suspended. These services may be provided via telehealth/telephone if clinically appropriate to do so. Signature requirements, including signatures for treatment plans and written consent, have been suspended. Verbal consent must be documented in the medical record at the time of service and providers are strongly encouraged to obtain signatures electronically when possible.

- For **Partial Hospitalization services** licensed under 55 Pa. Code Chapter 5210, DHS suspended the requirements to provide education, meet staffing ratios, as well as requirements related to the days of operation and the minimum number of hours of planned treatment programming per hospitalization day. The requirement that individuals and provider staff sign and date service plan reviews and updates are suspended. Verbal consent must be documented in the medical record at the time of service and providers are strongly encouraged to obtain signatures electronically when possible. MA Program payment requirements in 55 Pa. Code § 1153.52, regarding minimum number of hours of treatment in a Partial Hospitalization program day, have also been suspended. Additionally, the requirement in 55 Pa. Code § 1153.14 that MA payment will not be made for a covered partial hospitalization service conducted over the telephone also stands suspended. These services may be provided via telehealth/telephone if clinically appropriate to do so.
- For **Intensive Case Management** licensed under 55 Pa. Code Chapter 5221, DHS suspended the requirements for caseload size, supervisor-to-staff ratio, and supervisory contact. The requirement that intensive case management services be provided as needed in the place where the consumer resides or needs the service has also been suspended, thus allowing the use of telehealth to provide service as appropriate. Additionally, the service plans need to be updated at least once annually, instead of every six months. Providers may utilize telehealth to develop the initial service plan and for the subsequent reviews of the plan. The requirements for signatures of consumers and case managers in case notes, encounter forms and service plans have been suspended. Verbal consent must be documented in the medical record at the time of service and providers are strongly encouraged to obtain signatures electronically when possible.

- For **Psychiatric Rehabilitation Services** licensed under 55 Pa. Code Chapter 5230, DHS suspended the requirement that the location of services is consistent with the agency service description, allowing services to be provided through telehealth as appropriate. The requirements regarding the minimum number of hours for a Psychiatric Rehab director to be present in each facility, as well as the requirement for face-to-face supervisory time with staff for both individual and group supervisions, are also suspended. These functions may now be performed using audio-video technology. The requirement that individual and group services be provided in the facility or in the community is also suspended; these can be provided via telehealth when appropriate. Additionally, the requirements to complete orientation courses and obtain Certified Psychiatric Rehabilitation Practitioner certification have also been suspended. Training should focus on Centers for Disease Control and Prevention (CDC) recommendations and service provision, along with any new policies and procedures. Signature requirements have been suspended; however, verbal consent must be documented in the medical record at the time of service and providers are strongly encouraged to obtain signatures electronically when possible.
- For **Community Residential Rehabilitation Services (CRRS)** licensed under 55 Pa. Code Chapter 5310, a certified registered nurse practitioner or physician assistant, rather than a physician, may certify that a staff member does not have any contagious disease and sign the health appraisal for the client. In addition, providers have seven days from the enrollment date to complete the residential service plan instead of completing it on the day of enrollment. DHS has suspended the requirement that a Mental Health Professional sign each individual residential service plan and service plan review. Providers are, however, strongly encouraged to obtain the signature electronically when possible. The CRR staff may evaluate the client's adjustment to the program within 35 days, instead of 30 days of enrollment, and modify the service plan as needed. Client signature requirements, including those for residential plans, have been suspended. Verbal consent must be documented in the medical record at the time of service and providers are strongly encouraged to obtain signatures electronically when possible. The residential service plans may be reviewed and updated every 65 days instead of every 60 days.

DHS has suspended the requirements for the number of staff, but the CRR must take due diligence to maintain required direct-care staffing and have a conditional plan approved by OMHSAS. DHS has suspended the room size requirements in the event that a client must be moved or isolated or self-quarantined while participating in the program due to the program's adherence to guidelines issued by the CDC and the Pennsylvania Department of Health (DOH) for persons with COVID-19-related symptoms. The CRR may keep prescribed medications for the week in a weekly pill container for the client instead of keeping them in their original prescription containers. DHS also suspended the requirements that each client in a CRR be involved in the meal planning, shopping, food preparation, service and kitchen chores and spend a major portion of their time out of the residence.

DHS has suspended the requirement related to the frequency of the fire safety inspection; however, the CRR must take due diligence to obtain the fire safety inspection within the required time frame. The requirement to conduct fire drills is also suspended; however, the CRR must take due diligence to conduct fire drills within the required timeframe. Additionally, a conditional plan for fire safety inspection and fire drills must be reviewed and approved by OMHSAS.

- For **Long-Term Structured Residences (LTSR)** licensed under 55 Pa. Code Chapter 5320, the physical examinations of staff do not need to include screening for tuberculosis and hepatitis. Requirements regarding the number of direct-care staff persons have been suspended; however, a conditional plan for direct care staffing must be submitted to OMHSAS for review and approval. Additionally, required psychiatrist time per week may now be 15 minutes instead of the required 30 minutes. DHS has also suspended the requirement that substitute staff have equivalent qualifications to absent staff, with the condition that substitute staff receive adequate training to perform the duties.

The requirement that an LTSR mental health worker shall have completed 12 semester hours of college training in a mental health related field is suspended. Instead, the staff member may be working on fulfilling that requirement at the time of hire. Staff may also have at least a high school diploma or equivalency with four months of formal training in mental health. Staff members with these qualifications must have an extra 24 hours of "shadowing" a seasoned staff member. The requirement that staff be retrained annually on all policies and procedures, along with all topics listed under orientation requirements is also suspended. Training should focus on service provision as well as CDC and DOH recommendations related to COVID-19 for healthcare workers, along with any new policies and procedures.

Initial assessments may be completed within 7 days of admission instead of on the day of admission. Programs have a seven calendar-day grace period, in addition to the required 72 hours, to develop the initial treatment plan, and a 10 calendar-day grace period in addition to the required 10 days, to complete the comprehensive treatment plan. Programs have a 10 calendar-day grace period to complete 30 calendar-day updates and 30 calendar-day grace period for annual reassessments. DHS has suspended the requirement that the physician's orders be recorded and signed in each client's clinical record by the physician every 30 days, although providers are strongly encouraged to obtain the signature electronically when possible. The requirements for a written quarterly review of the drug regimen of each resident, by a licensed pharmacist, and that the findings be submitted to the program director and prescribing physicians, have also been suspended.

DHS has suspended the room size requirements in the event that a client must be moved or isolated or self-quarantined while participating in the program, due to the program's adherence to guidelines issued by the CDC and DOH for persons with COVID-19-related symptoms. DHS also suspended the prohibition against the use of seclusion in the LTSR, only if there is a documented reason to believe the resident has a communicable disease or COVID-19-related symptoms. DHS will not cite the LTSR programs for failing to meet the recommendations of CDC and DOH regarding universal precautions, provided all attempts to obtain personal protective equipment, face masks, and other required supplies are documented.

The requirements for annual and routine exams and medical and dental care for residents have also been suspended.

DHS has suspended the requirement related to the frequency of the fire safety inspection; however, LTSRs must take due diligence to try to obtain fire safety inspection within the required time frame. Also, although the requirement to conduct fire drills is suspended, the LTSR should make due diligence to conduct the fire drills within the required timeframe. Additionally, a conditional plan for fire safety inspection and fire drills must be reviewed and approved by OMHSAS



The regulatory suspensions discussed above are effective March 6, 2020, and will remain in place while the Disaster Proclamation remains in effect or such other time as DHS directs.

For regulations that have not been suspended, entities may submit a waiver request to OMHSAS to request temporary relief from other regulatory requirements to be considered on a case-by-case basis. These requests should be submitted to the respective OMHSAS Regional Office. OMHSAS does not require a letter of support from the county for those individual waiver requests.

A listing of all suspended regulatory requirements for DHS licensees will be posted to the DHS website after all DHS program offices have provided appropriate notification and guidance to their impacted licensees.

Comments and questions regarding this Memorandum should be directed to OMHSAS Field Offices: Central Field Office 717-705-8395; Northeast Field Office 570-963-4335; Southeast Field Office 610-313-5844; Southwest Field Office 412-565-5226.