Large Stakeholder Meeting Post PHE Waiver Changes

November 10, 2021

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Housekeeping

- Due to large number of participants, we will not be able to open lines for discussion
- Questions / comments can be entered into the Q/A box
- Can use chat to talk amongst selves, but will not include in Q/A response
- This presentation, playback, and responses to Q/A will be posted to the OCDD website.
- Send any formal comments or questions about proposal to OCDDInfo@la.gov

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Waiver Background Information

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OCDD Waiver Services

All rules / regulations / processes for the four OCDD Home and Community Based Waiver Services can be found in the following locations:

- 1915 (c) Home and Community Based Waiver Application / Amendment
- Louisiana Administrative Code/State Plan
- OCDD Waiver Manuals

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1915(c)Waiver Application

- OCDD waivers are enacted through 1915c “authority” through CMS
- Waiver application—details all rules, services, rate development, and other requirements, this is due every 5 years (process takes 5 – 9 months)
- Waiver amendment—submitted for changes between renewal period (process takes 3-6 months)
- Appendix K request—for temporary changes needed during a public health emergency (process takes 1 week-60 days)
- Waiver applications and amendments must be submitted for public comment; this is not required for Appendix K
- CMS must approve ALL requests: Application, Amendment, Appendix K
- If States authorize services not approved by CMS, we lose the federal funds associated with this service (typically 63-67% of the cost)

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Rulemaking/State Plan

- State statutes direct agencies to engage in the rulemaking process in order to implement new state and federal laws and to update rules in place.
- Such rulemaking actions are published in the Louisiana Register in accordance with the Administrative Procedure Act.
- Allows for public input (via public comment period) as well as legislative involvement.
- Applies to the rules associated with the four OCDD waivers.
- Process for new rules and updates takes 4-6 months

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Rulemaking/State Plan

- Some activities that impact waiver services are part of Medicaid State Plan Services
- Medicaid State Plan Services require CMS approval
- Temporary changes to Medicaid State Plan Services require this request through an 1135 request
- CMS must approve 1135 requests

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Waiver Manuals

- Contain the most detailed information for operationalizing the waiver, including requirements for services and providers.
- Undergo an LDH internal review process.
- Public comment is not required; however, OCDD works with relevant stakeholders for feedback prior to changes and training post-changes.
- CMS approval is not required for manuals; however, manuals must not contradict any approved information in application or rule.
- Process for updating manual is typically 2-3 months.
- Updates to waiver manuals are not conducted for temporary, emergency situations.

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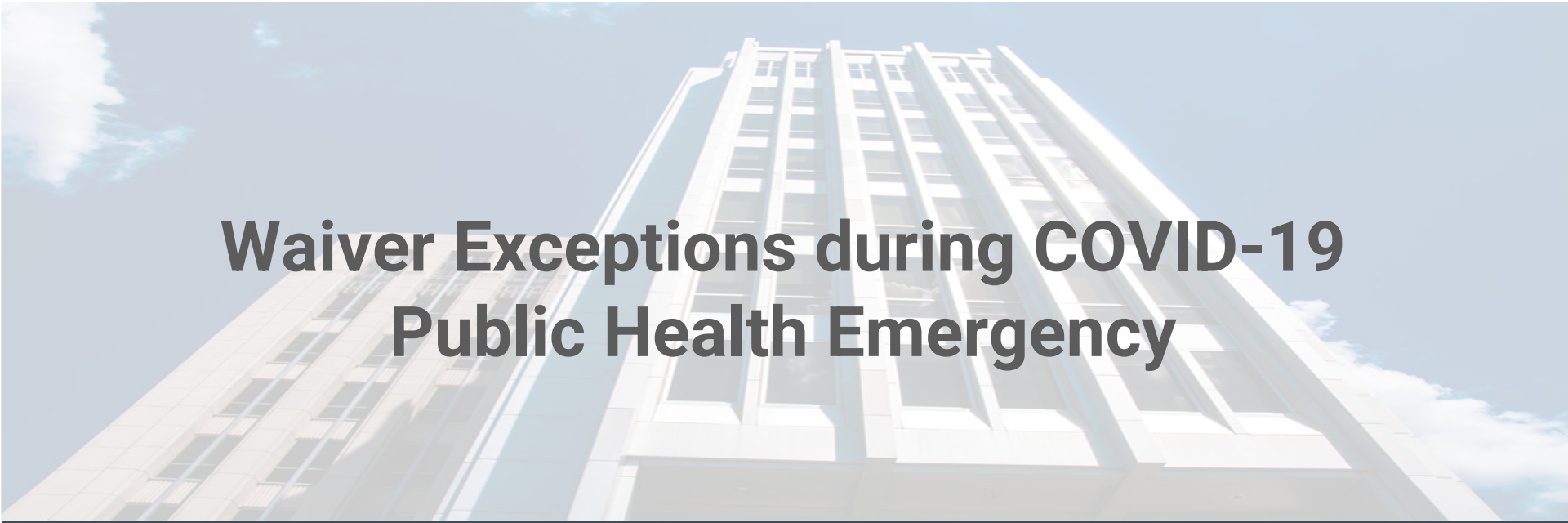

Waiver Exceptions during COVID-19 Public Health Emergency

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Exceptions Timeline - Overview

- Appendix K, rule changes, and 1135 in place since February 2020
- CMS granted approval to continue Appendix K exceptions until 6 months after the end of the Public Health Emergency.
- 1135 changes must end when Public Health Emergency (PHE) ends.
- PHE in place until January 2022, may be extended for additional 90 day period(s) beyond that date.
- Biden administration has indicated they will give at least 60 days notice prior to ending the PHE.
- OCDD submitting waiver amendments now to ensure approval and allow for planning prior to end of PHE.

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Focus Groups - Overview

Stakeholders requested consideration of continued flexibilities in 3 areas:

- Family members serving as paid caregivers
- Allowances for staff to work over 16 hours per day (“16 hour rule”)
- Continuation of virtual visits

In response, 3 focus groups established with the following goals:

- OCDD to provide relevant information / research on the topic for background information
- Brainstorm among the workgroup members using guiding questions
- Come to shared consensus on a plan to move forward on this topic

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Focus Groups – Participant Selection

- Communication sent through all stakeholder groups announcing opportunity to register for focus groups
- Focus groups limited to 26 persons to allow for discussion
- Over 200 people registered for focus groups
- To ensure diversity, first looked at participant type
  - Individual with I/DD
  - Parent or family member of minor child with I/DD
  - Parent or family member of adult with I/DD
  - Representative of advocacy organization
  - Private provider
  - Support coordinator
  - Local Governing Entity
- Further breakdown by geographic area, gender, and race

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Family as Paid Caregiver – Key Takeaways

- Benefits to having family continue to be paid caregivers post-PHE provided
- Some family members reported they wanted to ensure ability for respite and other workers
- Having family as paid caregiver has helped with the direct support workforce shortage crisis
- Need to ensure that self-determination is preserved, if individuals do not choose to have family as paid caregiver
- Need to ensure that there is a mechanism to monitor family as paid caregiver, in same/similar way that all direct support workers are monitored
- Need to ensure families understand requirements

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Family as Paid Caregiver – CMS Regulations

States must differentiate between Live-In Caregivers, Relatives and/or Legal Guardians, and Legally Responsible Individuals (LRI) when defining caregivers

When states allow family members to be paid caregivers:

- Specify the type of family caregivers to whom payment may be made
- Specify which waiver services payment may be made
- Limitations on the amount of services that may be furnished by a family caregivers
- Show how we ensure payment is made only for services rendered
- Show how we ensure that services furnished are in the best interest of the individual
- Family members must meet established provider qualifications
- Demonstrate adequate monitoring for all of the above factors
- When states allow LRI to be paid caregiver, can only pay for the provision of extraordinary care

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Family as Paid Caregiver – Decisions

- Family members not living in the home will have no restrictions.

- Family members living in the home will be able to provide paid services up to a maximum of 40 hours per week (for each family member)
  - The number of hours provided will continue to be based on person-centered planning and resource allocation.
  - Paid family members must meet the same qualifications as other direct support workers, including training and background checks.
  - Paid family members must follow the same documentation requirements and work expectations as other direct support workers (critical incident reporting, use of EVV, progress notes).
  - Paid family members will be subject to same monitoring by provider agency or employer as other direct support workers.
  - Documentation in the plan of care that family as paid caregiver has been discussed and in best interest of the individual.

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Family as Paid Caregiver – Decisions

- Legally Responsible Individuals will be able to provide services with the same limitations and requirements as family living in the home, however, additional discussion and documentation in the plan of care will be required to establish the need for extraordinary care.

- Self-Direction: For individuals using the self-direction model, the person who is named as the “employer” or “authorized representative” with the Fiscal Agent is not able to also be the “employee” due to a conflict of interest.

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Family as Paid Caregiver – Follow Up

- More information and training for families on system and requirements
  - Develop attestation form for paid family members to complete (in different languages/Braille) indicating understanding of system and requirements
  - Consider training for family members, in conjunction with other workers, and if there are additional training needs
- Add rule to clearly define Legally Responsible Individual
- Define criteria for extraordinary care and include in waiver manual
- Define criteria to ensure family as paid caregiver in best interest of the person
  - Initial and annual discussion with participant to ensure this is what they choose
  - Instances for removal when not in best interest and process to ensure safety
  - Mechanism to ensure not on DCFS CPS registry and fair due process

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16 Hour Rule – Key Takeaways

- Because of both direct support workforce crisis and COVID-19 safety precautions, there is an increased need for direct care staff to work over the allowable 16 hours per day in certain circumstances.
- This is not ideal situation due to potential for:
  - Worker burnout
  - Increased overtime payment requirements
  - Increased risk of abuse/neglect
- However, it is often necessary to ensure individuals have the support they need.

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16 Hour Rule – Regulations

- No specific regulations at federal level regarding working over 16 hours
- Department of Labor rules require that direct support workers be paid time and a half for hours worked over 40 hours in the week
- Prior to 2015, there was an exemption for these types of workers, no longer in place, other than companionship exemption
- “16 Hour Rule” was in rule and waiver manual prior to COVID

16 Hour Rule – Decisions

- Remove language from the New Opportunities Waiver Rule regarding the prohibition of a staff working over 16 hours.
- Update the NOW Waiver Manual to include the following:
  - No direct support worker should be pre-scheduled more than 16 hours in one day. Staff should only work over 16 hours in a 24 hour period for unplanned situations when a paid staff or natural support is not available and the person cannot be left unsupported.
  - No prior approval is required when a staff works over 16 hours in a 24 hour period, however, a review will be required after these instances occur to identify and address potential barriers and review any health and safety concerns.
    - Each instance this occurs will be reviewed by the provider/employer.
    - If 5 times in one quarter, SC facilitates team discussion/develops plan of action
    - If 5 times in next consecutive quarter, review by the LGE, who will recommend additional actions, if indicated.
    - If 5 times in the following consecutive quarter, review by OCDD Central Office, who will recommend additional actions, if indicated.
- No blocked payments as a result of working more than 16 hours in one day

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Virtual Visits – Key Takeaways

- During COVID-19, virtual visits have helped to keep participants and families safe by limiting in-person interactions
- In many instances, in-person visits are needed to assure the health and safety of the participant and to observe that the plan of care is being followed
- Increased use of technology should be considered across all services to be more efficient for participant, family, and providers

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Virtual Visits – Regulations

There are no specific federal regulations requiring face-to-face/in-person visits, but there are state regulations in licensing and certification processes when used to monitor and ensure health and safety.

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Virtual Visits – Decisions: Certification and SIL

- Requirement for face-to-face initial certification visits from the LGE will return at the end of the PHE.
- Requirement for a minimum of monthly face-to-face contact for persons receiving SIL services will return at the end of the PHE.
  - NOW manual will be updated to include an exception process, which must include justification for why exception is needed and demonstration how the required service will be provided virtually.
- There is no current prohibition of the initial certification visits or monthly SIL visits being conducted face-to-face at this time; the option for virtual remains available during the PHE and should be considered based on parish positivity and current mandates.

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Virtual Visits – Decisions: SC

- All initial planning meetings and annual meetings will be conducted in-person as prior to the PHE. And, a minimum of one quarterly meeting will be conducted in-person to assure that at least two in-person visits occur annually.
- Additional meetings held by the SC that were previously required to occur in-person may be conducted virtually if specific conditions are met and the use of virtual visits is documented in the CPOC
- OCDD (and LGE) are able to require in-person visits if it is determined virtual visits are not in the best interest of the individual.

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Virtual Visits – Decisions: SC Conditions for use of Virtual Visits

- The individual/family is in agreement that a virtual visit is in the best interest of the individual, and
- The SC is in agreement that a virtual visit is in the best interest of the individual, and
- The applicable provider agencies are in agreement that a virtual visit is in the best interest of the individual, and
- The legally responsible individuals or family member(s) living in the home is not a paid caregiver, and
- There are no instances of the following in the past two years of:
  - Discovery by SC or reported by provider of an accident, incident, injury that meets Critical Incident Review Criteria
  - Lack of desired personal outcomes: such as education, employment, and community engagement
  - Unsafe living conditions, lack of sanitation, lack of food and supplies
  - Change in involvement of natural supports
  - Medication issues
  - Changes in behavior, medical status or appearance (weight gain/loss), and
- Technology is available to complete the visit with direct observation of the recipient and the home, and
- There is evidence that the requirements for the quarterly visit can be completed virtually.

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Virtual Visits – Follow-Up Actions

- Explore utilization of electronic signature/e-mail agreement for required documents
- Develop process and expectations for use of virtual visits
  - Update waiver manual(s) and Guidelines for Support Planning to include updated process
  - Establish process for tracking and documentation of virtual visits, including but not limited to a mechanism to identify virtual visits through LaSRS, considerations for SC billing, and notification to LGE when virtual visits are selected
  - Establish process for changes to plan for virtual visits once determined in the annual meeting (change could come from family, SC, LGE, or OCDD)
- Identify a process to review a request for an exception to the monthly face-to-face SIL visit, and include a process in the waiver manual.

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Other Waiver Exceptions: Continue Post-PHE

- Allow electronic verification for meetings/documentation
- Allow sharing across any two waivers, billed at shared rate in each waiver
- Continue to offer Monitored In-Home Caregiving as a service in the ROW and NOW
- Virtual day habilitation as a service
- Small group activities as a service

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Other Waiver Exceptions: Discontinued Post-PHE

- Addition of 20 hours weekly to the capped Children's Choice Waiver
- Conversion of day habilitation and vocational hours to in-home care
- Suspension of background checks for immediate family members
- Minimum age of direct support worker to 16 years of age
- Statement of Approval to suffice for Level of Care
- 90-L to remain in effect until resolution of pandemic
- Relaxation of training requirements for DSWs
- Hazard payments for working with COVID positive individuals
- Retainer payments to ADC facilities due to mandated closure

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Next Steps and Projected Timelines

- Waiver Amendments will be posted for public comment in December and January, with plan to submit to CMS in January and February
  - CMS has 90 days to approve or take off the clock for questions
  - Goal to have in place prior to July, 2022
- Rule changes will be posted for public comment in January and February
  - This may vary depending on CMS questions on the amendments
  - Goal to have in place prior to July, 2022
- Waiver manuals will be updated following approval from CMS of amendments
- Training to all relevant stakeholders on process changes will occur following approval and updates to waiver manuals

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Conclusion/Wrap-Up

- Working to get all needed changes approved an in place prior to end of PHE, so participants/families have ample time to prepare
- Exceptions will continue through the PHE, and for 6 months thereafter for those in Appendix K
- Support Coordinators will work with participants / families on changes needed in CPOC
- OCDD will continue to work with focus groups on follow-up items identified
- Send questions or comments for consideration to OCDDInfo@la.gov.

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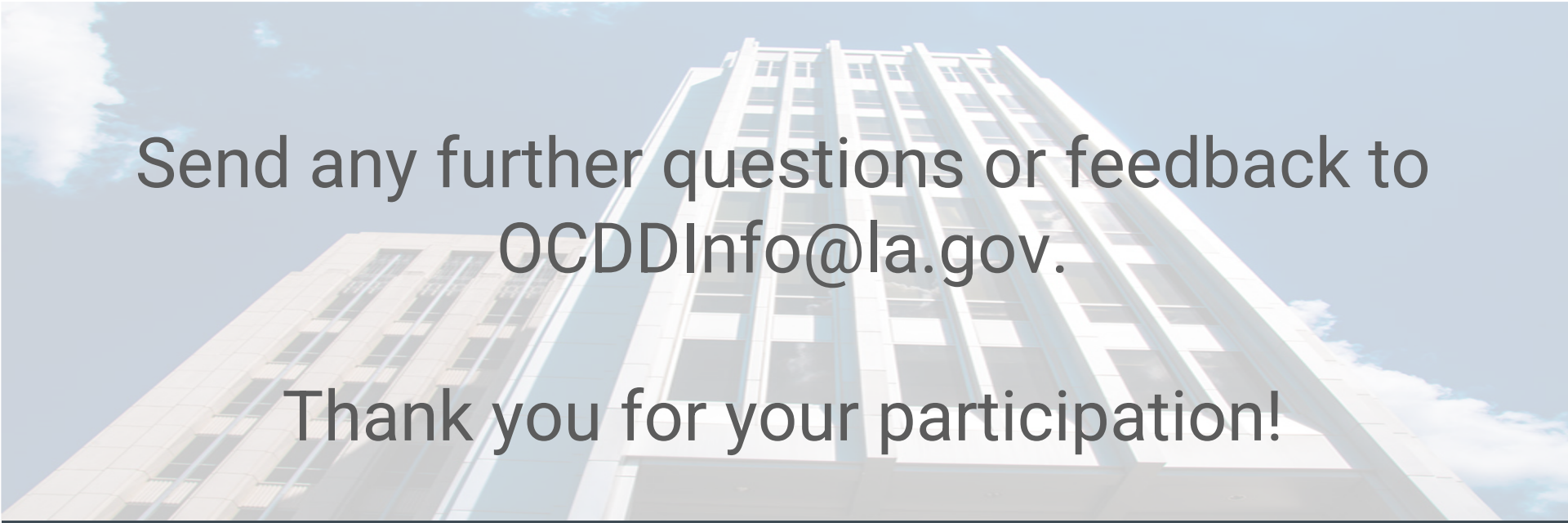

Send any further questions or feedback to OCDDInfo@la.gov.

Thank you for your participation!

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