

Informational Memo

CMS Approved Waiver Amendments for Consolidated and Person/Family Directed Support Waivers Effective July 22, 2015 and Guidance for Implementation

ODP Communication Number: Memo 073-15

The mission of the Office of Developmental Programs is to support Pennsylvanians with developmental disabilities to achieve greater independence, choice and opportunity in their lives.

AUDIENCE: Individuals and Families, Administrative Entities (AEs), Supports Coordinators (SCs), SC Supervisors, Supports Coordination Organizations (SCOs), Providers, and other interested parties

PURPOSE: To inform all interested parties of the approval of the fourth set of amendments for the Office of Developmental Programs' (ODP) Consolidated and Person/Family Directed Support (P/FDS) Waivers **effective July 22, 2015**. These amendments are available on the Department of Human Services (DHS) website. This Informational Memo also provides guidance for implementing new requirements approved in the Waivers.

BACKGROUND AND DISCUSSION:

ODP previously released Announcement 039-15, *NOW AVAILABLE: Fourth Waiver Amendments Submitted to CMS for ODP Consolidated and Person/Family Directed Support Waivers Effective July 1, 2015*. This Announcement informed stakeholders that ODP submitted amendments for the Consolidated and P/FDS Waivers to the Centers for Medicare and Medicaid Services (CMS) on April 23, 2015. This Announcement also listed the notable changes made to each Appendix of the Waivers. This list remains valid; there have been no alterations to the information listed as a notable change in Announcement 039-15.

Since the release of Announcement 039-15, CMS requested the following additional changes to the Waivers:

- The proposed effective date and approved effective date is July 22, 2015.
- The following statement was added to the Home and Community–Based Settings Waiver Transition Plan in the Main Module, “The Office of Developmental Programs (ODP) assures that the settings transition plan included with this waiver amendment will be subject to any provisions or requirements included in Pennsylvania’s approved Statewide Transition Plan. The ODP will implement any required changes upon approval of the Statewide Transition Plan and will make conforming changes to this waiver when the next amendment or renewal is submitted.”
- The mandatory check box that states the following was selected in Appendix B-5-a, “Spousal impoverishment rules under §1924 of the Act are used to determine the eligibility of individuals with a community spouse for the special home and community-based waiver group. In the case of a participant with a community spouse, the State uses spousal post-eligibility rules under §1924 of the Act.”
- Appendix D-1-e was updated to reflect how risks are identified, addressed and updated in back-up plans.
- Appendix G-2-b-i was revised to clarify provider education and training requirements for restrictive interventions.
- The following statement was added to Appendix I-2-a, “Changes being made to the previous amendment regarding appendix I and J must be incorporated in this application as this amendment comes after the proposed effective date of the .03 amendment which is July 1, 2014. If the changes are no longer reflected when .03 is approved, the state will submit a technical amendment to incorporate the appropriate language to both appendix I and J.”

Information on the approved Consolidated and P/FDS Waivers effective July 22, 2015 can be found on the DHS Website (<http://www.dhs.state.pa.us/>). The path to find this information is: DHS Organization > Office of Developmental Programs > Consolidated Waiver and DHS Organization > Office of Developmental Programs > Person/Family Directed Support Waiver.

Direct links to the approved Consolidated and P/FDS Waiver amendments are provided below:

Consolidated Waiver Amendment:

<http://www.dhs.state.pa.us/learnaboutdhs/waiverinformation/consolidatedwaiverforindividualswithintellectualdisabilities/index.htm>

Person Family Directed Support (P/FDS) Waiver Amendment:

<http://www.dhs.state.pa.us/learnaboutdhs/waiverinformation/personfamilydirectedsupportwaiver/>

To assist with understanding the exact changes approved in these amendments, ODP has developed a *Waiver Amendment Comparison Chart* that provides a side-by-side comparison of the previously approved waiver language and the verbatim changes recently approved in the amendments effective July 22, 2015. This document can be found at http://www.dhs.state.pa.us/cs/groups/webcontent/documents/communication/c_204643.pdf.

Guidance for Implementing New Waiver Requirements

The majority of the changes made in the Waiver amendments aligned the Waivers with current regulations, policies, clarifications and practices. There were some changes to service definitions, however, that contain new requirements. ODP has developed the following guidance to assist stakeholders in implementing these new requirements.

The Prevocational service definition was amended in the Waivers to require any participant under the age of 24 who requests Prevocational Services as a new service to have documentation that OVR has closed the participant's case or that the participant has been determined ineligible for OVR prior to having the service authorized in his or her Individual Support Plan. This requirement does not apply to any participant who was authorized to receive Prevocational Services prior to the release of this Informational Memo. ODP is aware that this information contradicts guidance contained in bulletin 00-14-05 "OVR Referral Process for Employment Services". ODP is working to revise this bulletin. Until that occurs, the requirements in this amendment must be implemented.

The Supported Employment service definition was amended to align the definition of competitive integrated employment with the federal Workforce Innovation and Opportunities Act and clarify when referrals to the Office of Vocational Rehabilitation (OVR) are required prior to receiving Supported Employment services. Please delay implementation of the Supported Employment service definition regarding OVR referrals. ODP is seeking additional clarification from CMS regarding when referrals to OVR are required to ensure compliance with §1915(c)(5)(C) of the Social Security Act. As a result, Administrative Entities and Supports Coordination Organizations should ensure that participants requesting Supported Employment services for any reason are referred to OVR or have documentation that he or she has been determined ineligible for OVR services or that OVR services have stopped.

The Nursing and Therapy service definitions were amended to clarify that these services are only available to individuals who are 21 years of age and older. Individuals who are under 21 years of age are eligible to receive all medically necessary Nursing and Therapy services through the Medical Assistance program's managed care or fee-for-service delivery system. There are no limitations (other than medical necessity justification) on the number of hours of nursing and therapy services covered by Medical Assistance for participants who are under 21 years of age.

Nursing and Therapy services are only available for individuals who are 21 years of age and older when documentation shows that the service is medically necessary and that a legally liable third-party medical resource is unavailable; i.e., insurance limitations have been exhausted, the service is not covered by the insurer or the insurer has denied the service.

Based on feedback from stakeholders, it is understood that there are times when insurance carriers decline to provide written documentation. While written documentation from insurance carriers of limitations, lack of coverage for services and denials must be requested; ODP will also accept the following documentation:

- A copy of the policy or some other written statement documenting that the service, item or amount requested exceeds the allowable service limit or that the service is not covered.
 - Individuals who are 21 years of age and older are not entitled to private duty nursing/shift nursing through the Medical Assistance program's fee-for-service or managed care delivery systems. The Medical Assistance program's current Adult Benefit Package Chart indicates that home health care is the only service available in the individual's home with a nursing and/or therapy component. This chart is available at the end of OMAP Bulletin 99-15-05 which can be accessed at http://www.dhs.state.pa.us/cs/groups/webcontent/documents/bulletin_admin/c_172249.pdf. This chart should be printed and kept in each individual's file as documentation that private duty nursing/shift nursing is not available for individuals 21 years of age and older.
- Written confirmation of information received verbally from an insurance carrier should the insurance carrier decline to send a denial letter is acceptable only when it: a) is sent to the insurance carrier, b) identifies the item or service in question, and c) requests that the insurance carrier advise the writer of any inaccuracy.

The Assistive Technology service definition was amended to cover independent living or smart home technology devices that promote the independence of participants and decrease their need for assistance from others. These devices can be covered for participants who reside in private homes as well as participants who reside in residential habilitation settings. ODP is developing a procedure to be utilized for participants who reside in residential habilitation settings. When these types of devices are provided to participants who reside in residential habilitation settings, there will need to be documentation in the ISP of how the device has reduced the participant's need for staffing over time or that the participant has moved to a private home.

Electronic devices that are utilized to increase an individual's ability to communicate, to participate in community activities, to participate in competitive employment or to assist the individual to perform daily living activities are included in the amendments as Assistive Technology. The waiver specifies that only the devices and applications for the devices are covered, monthly service fees are not included and are thus not covered through the Waivers. No more than one replacement electronic device is allowed every five (5) years.

Generators are also included as Assistive Technology for participants residing in private homes when the following has been documented:

- The generator purchased is the most cost-effective to ensure the health and safety of the participant;

AND

- The neighborhood has a history of unreliable power as documented in a letter from the power company;

OR

- The participant's health and safety is dependent upon electricity as documented by a physician.

To ensure that a generator is cost-effective, the independent evaluation of the participant's assistive technology needs must include the development of a list all devices, supplies, equipment, etc. that would be most effective to meet the need(s) of the participants. The least expensive option from the list must be selected for inclusion in the ISP. This is a requirement for all Assistive Technology covered by the Waivers. (It is important to note that it is not expected that the professional performing the evaluation list every device or waiver service in existence. It is expected that the professional will develop the list based on their knowledge and experience of the need being evaluated.)

A participant's health and safety will only be considered dependent upon electricity if the loss of power would require the participant to be hospitalized. If it is determined that a generator is needed to power a specific piece of equipment to ensure the participant's health and safety, the smallest generator that would safely meet that need must be chosen. The ISP team must document in the ISP how the generator will be used and who is responsible for using it.

The power company will be responsible for determining whether a neighborhood has a history of unreliable power when deciding whether to provide a letter to the participant's household. The documentation of a participant's health and safety being dependent upon electricity must be related to a medical need of an individual. Generators will not be covered by the Waivers solely to heat the participant's private home as it would not be considered to be for the primary use of the participant.

Appendix I-2-a-2 was revised to include a retention factor for residential eligible rates. This retention factor is calculated as part of the residential eligible rate and is retroactively effective on July 22, 2015.

Further guidance regarding implementation of the Waiver amendments is being developed and will be forthcoming. This will include revisions to the ISP Manual to include this information and any other updates needed.

If you have any questions regarding the waiver amendment process or the information posted, please email RA-odpcomment@pa.gov.

Obsolete Document:

This Informational Memo obsoletes Announcement 054-15, *Delay Implementation of Fourth Waiver Amendments for ODP Consolidated and Person/Family Directed Support Waivers Effective July 1, 2015.*