



# OLTL Updates Medical Assistance Advisory Committee (MAAC)

February 23, 2023

# Agenda

- Appendix K
- CHC Request for Information(RFI)
- HCBS Settings Rule

# Appendix K Updates

# Appendix K Waiver Amend.

Since March 6, 2020, the Office of Long-Term Living (OLTL) has been operating under the Appendix K, Emergency Preparedness and Response amendment approved by the Centers for Medicare & Medicaid Services (CMS). Appendix K allowed temporary changes or sometimes we use the term flexibilities-- to the Community HealthChoices and OBRA 1915(c) waiver in response to the COVID-19 global pandemic. These flexibilities were also extended to the Act 150 Program where applicable.

OLTL is planning to resume normal waiver operations by May 11, 2023

Appendix K Flexibility	Guidance
<b>Service Limitations</b>	<b>Adult Daily Living</b> – Long-Term or Continuous Nursing may no longer be provided temporarily as a separate service at the same time that Adult Daily Living Services are provided.
	<b>Residential Habilitation</b> – Long-Term or Continuous Nursing may no longer be provided temporarily as a separate service at the same time that Residential Habilitation is provided.
<b>Respite</b>	<b>Respite</b> in a licensed facility may no longer be extended beyond 29 consecutive days. Previously approved extensions may not go beyond May 11, 2023.
<b>Personal Assistance Services -</b>	Spouses, legal guardians, representative payees and persons with power of attorney may no longer serve as paid direct care workers. Those previously approved as direct care workers will not be paid for hours worked after May 11, 2023.

# Appendix K Waiver Amend.

Appendix K Flexibility	Guidance
<p><b>Expanded Settings Where Services May Be Provided</b></p>	<p><b>Residential Habilitation and Structured Day Habilitation Services</b> may no longer be provided to participants by Residential Habilitation and Structured Day Habilitation staff in private homes.</p>
	<p><b>Adult Daily Living Services</b> may no longer be provided to participants by Adult Daily Living staff in private homes.</p>
	<p><b>Adult Daily Living Services</b> may no longer be provided remotely.</p>
	<p><b>Structured Day Habilitation</b> may no longer be provided remotely using phone or video conferencing.</p>
	<p><b>Cognitive Rehabilitation and Behavior Therapy</b> may no longer be provided remotely using phone or video conferencing.</p>
	<p><b>Counseling Services</b> may no longer be provided remotely using phone or video conferencing.</p>

# Appendix K Waiver Amend.

Appendix K Flexibility	Guidance
<b>Modification of Worker Qualifications</b>	<b>Residential Habilitation, Structured Day Habilitation Services, Adult Daily Living, and Personal Assistance Services</b> – Individual staff members who are qualified to provide any one of these services may no longer be reassigned to provide Residential Habilitation, Structured Day Habilitation Services, Adult Daily Living, and Personal Assistance Services.
<b>Initial Level of Care Assessments</b>	<b>Initial level of care assessments using the FED that take place in the participant’s home</b> must be conducted face-to-face. <b>Initial level of care assessments using the FED that take place in nursing facilities</b> may no longer be conducted remotely using phone or video conferencing.
<b>Needs Assessments/ Reassessments</b>	Assessments and Reassessments, including the comprehensive needs assessment, must be conducted face-to-face.
<b>Person-Centered Service Planning/Service Coordination</b>	Service Coordinators must monitor participants and PCSPs through face-to-face contacts. Person-Centered Planning Team (PCPT) meetings and PCSP development must be conducted face-to-face.
<b>Retainer Payments to Address Emergency Related Issues</b>	Retainer payments to direct care workers providing Personal Assistance Services in both the agency and participant-directed models may no longer be made.

# CHC Request for Information(RFI)

# HCBS Settings Rule



# Heightened Scrutiny

CMS requires states to identify any locations where waiver services are provided that meet one or more of the following criteria:

- Settings that are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;
- Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution; and/or
- Any other settings that have the effect of isolating individuals receiving waiver services from the broader community of individuals not receiving Medicaid Home and Community-Based Services.

# Heightened Scrutiny

- The Department released information about each location on November 19, 2022, for a 30-day public comment period.
- The Department received written comments specific to locations that render services through the Office of Long-Term Living from 5 organizations.
- A summary of comments received, and Department responses are available on the [DHS STP webpage](#)
- Summary of most common comments received:
  - Participant interviews
  - Identification of settings which house up to three individuals with disabilities and have an ownership or other financial arrangement with a home care provider to provide Personal Assistance Services (PAS) to these individuals.

# Centers for Medicare and Medicaid Review

CMS will complete a Heightened Scrutiny review of the information submitted by the Department. Through the following Heightened Scrutiny review process, CMS will determine whether each location has the qualities of a home and community-based setting:

- CMS will compile a random sample of locations to review.
- CMS will review all information presented by the Department and other parties for each location selected for the review sample.
- CMS will either approve the Department's assertion that the location meets the Home and Community-Based Services Rule requirements or provide feedback to the Department on missing information, questions for clarity, or reason(s) why CMS cannot agree that a location is able to overcome the presumption that it is an institution.
- CMS may request to review additional locations or suggest changes to the Department's heightened scrutiny review process if the sample review highlights concerns. If warranted, CMS may conduct an onsite review as well.
- CMS will make final heightened scrutiny review determinations of each location in the sample available on the CMS HCBS [website](#).

# Provider Timeline for Compliance

- February
  - 1) Submission of heightened scrutiny sites to CMS
  - 2) OLTL anticipates that CMS will notify OLTL and affected providers of their final decisions on Heightened Scrutiny
- February-March
  - 1) Non-Compliant Providers will work with OLTL to safely transition HCBS participants to an OLTL-enrolled provider
- March 2023 onward
  - 1) Continued provider monitoring process

# Questions?

