MRT Outreach Meeting with HCA, HCP, & LeadingAge

July 20, 2020

Agenda

Agenda Item	Presenter
Welcome & general housekeeping	
30-month lookback	Lisa Sbrana, Mary Frances Carr
Personal Care Services and Consumers Directed Personal Assistance Program Changes • Independent Assessor • Independent physician panel • Change in PCS/CDPAP eligibility	Lana Earle
Private Home Care Exchange	Danielle Holahan
LHCSA RFP	Lana Earle
Wage Parity Enforcement	Erin Kate Calicchia
Fair Hearing Reform	Brett Friedman
General Discussion	All

30-Month Lookback/ Transfer Penalties for Community Based Long Term (CBLTC) Services

CBLTC Services Impacted

- CBLTC Services
  - Adult Day Health Care
  - Assisted Living Program (ALP)
  - Certified Home Health Agency (CHHA) Services
  - Personal Care Services
  - Consumer Directed Personal Assistance Program (CDPAP)
  - Limited Licensed Home Care Services
  - Private Duty Nursing
  - Managed Long-Term Care in the community
- Impacts Fee-for-service and Managed Long Term Care Plan enrollment
- Enrollment in Mainstream Managed Care is not impacted
- Does not apply to waiver services obtained pursuant to SSA 1915(c) or (d)

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30-Month Lookback

- Applies to Aged, Blind, or Disabled individuals seeking coverage of CBLTC services
- Effective January 1, 2021 for new applications and requests for an increase in coverage
- Lookback increases one month each month until full 30 months from 10/1/2020 (April 1, 2023)
- Proof of need for community based long-term care services is required

Transfer Penalty

- Penalty imposed for assets transferred on or after October 1, 2020
- Penalty period begins with application date for individuals newly applying for CBLTC services, or when a consumer requests an increase in coverage for CBLTC services
- The same exceptions to the Medicaid transfer of assets rules and provision for an undue hardship waiver that apply to institutionalized individuals would apply to non institutionalized individuals seeking coverage of CBLTC services

CMS Approval

- State Plan Amendment to apply transfer rules to non-institutionalized individuals (individuals seeking CBLTC state plan services)
- 1115 Waiver Amendment to:
  - apply a 30 month lookback period, rather than federally required 60 months
  - apply the transfer rules to services provided through managed long term care and fee-for-service, but exclude services provided through mainstream managed care

PCS and CDPAP Updates

Role of the Independent Assessor (IA)

- Initially the state will amend the existing Conflict Free Conflict Free Evaluation and Enrollment Center (CFEEC) contract with Maximus to be the Independent Assessor (IA). The Department will transition to a procured vendor on October 1, 2022
- ***Role of the Independent Assessor (IA)***
  - Conduct Community Health Assessments (CHA) and Reassessments required for fee-for-service members and mainstream plan enrollees receiving Personal Care Services (PCS) or Consumer Directed Personal Assistance Program (CDPAP) as well as required assessments for members enrolled in Managed Long Term Care Plans
  - Conduct medical exam to issue Independent Physician's Orders for PCS and CDPAP for members with needs in performing personal care tasks
  - Conduct Physician Panel Review of 12+ Hours Per Day Personal Care Cases

Role of Independent Assessor (IA)

The IA will use the CHA assessments and the medical exam (physician's orders) to determine eligibility for PCS and CDPAP for fee-for-service members as well as MLTC and mainstream members

- In addition to receiving a physician's order, the new eligibility criteria for PCS and CDPAP requires an individual must also be assessed under the Community Health Assessment (CHA) as:
  - Needing at least limited assistance with more than two Activities of Daily Living (ADLs) (eating, bathing, personal hygiene, dressing, walking, locomotion, toilet use and bed mobility), or
  - For individuals with a Dementia/Alzheimer's diagnosis, needing at least supervision with more than one ADL
- The new ADL criteria does not apply to individuals who requested and received any initial authorization for such services at any time before the implementation date of the new criteria
- The frequency of CHA assessments that will be conducted by the IA will change from semi-annual to annual (unless there is a change in the member's condition)

Role of Independent Assessor (IA)

IA Physician's Orders

- The IA will conduct medical exam, including whether individual is self-directing, to provide physician's orders for PCS and CDPAP
- Physician's orders process will include protocols and standards to determine if members seeking to be in CDPAP are capable of self-directing, either independently or with their consumer designated representatives
- Physician's orders will not recommend hours of care

Role of Independent Assessor (IA)

Outcome of CHAs conducted by IA also determines Plan Eligibility for MLTC Partial (MLTCP) and Medicaid Advantage Plus (MAP)

- New eligibility criteria for MLTCP and MAP will be implemented:

  Individuals that require Community Based Long Term Care Services for a continuous period of more than 120 days and demonstrate under the Community Health Assessment (CHA) and they:

  - Need at least limited assistance with more than two Activities of Daily Living (ADLs) (eating, bathing, personal hygiene, dressing, walking, locomotion, toilet use and bed mobility), or
  - For individuals with a Dementia/Alzheimer's diagnosis, need at least supervision with more than one ADL

MCOs and LDSS Will Continue to Develop Plans of Care

- MCOs/LDSS will no longer be required to conduct CHA assessments or reassessments (including change of condition assessments) for fee-for-service or plan members receiving PCS or CDPAP
- Using the CHA completed by the IA and physician's orders provided by the IA, MCOs/LDSS will continue to develop and monitor plans of care for their members and provide service authorizations
- MCOs/LDSS will continue to have access to the UAS / CHAs in the same way it does today
- Plans of care developed by the MCOs/LDSS that include more than 12+ hours of PCS or CDPAP will be referred by the MCOs/LDSS to IA for review by a Physician Panel

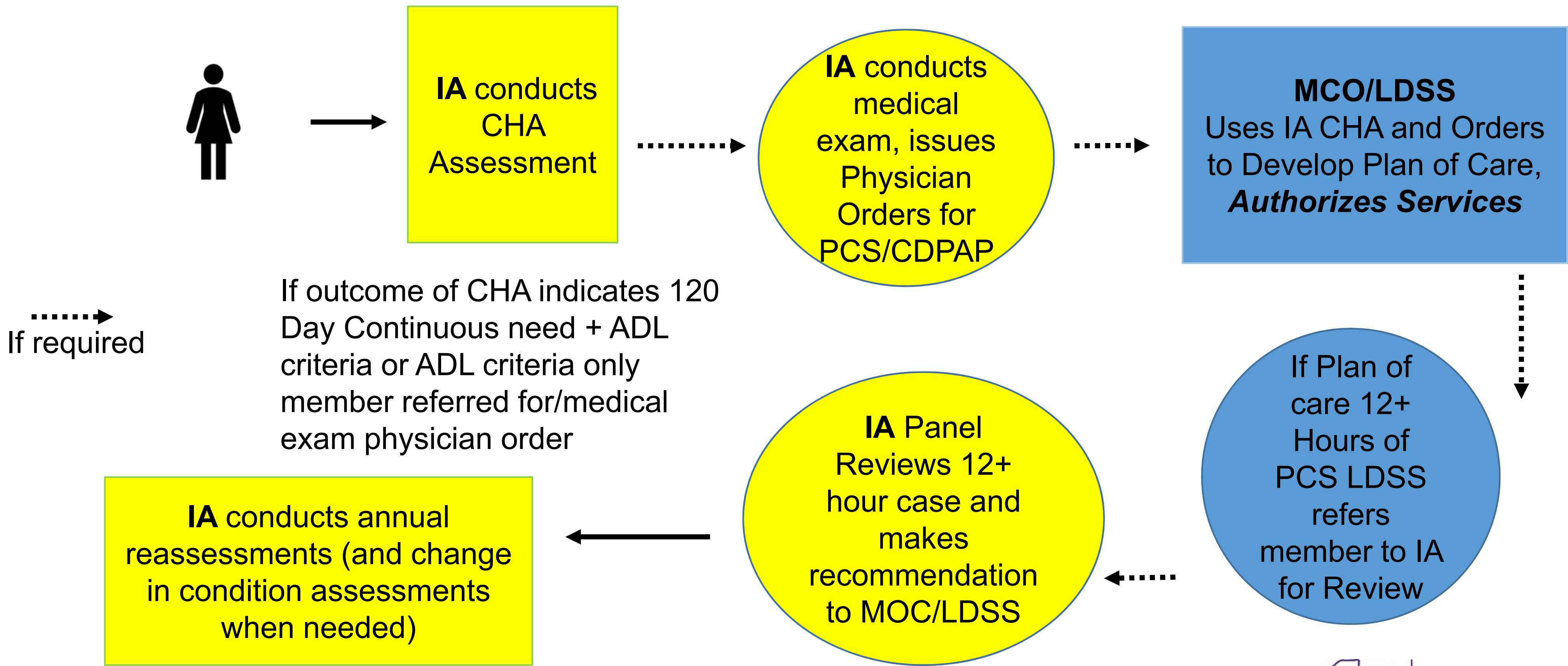
Role of Independent Assessor (IA)

IA Physician Panel to Review 12+ Hour Cases

- The physician's panel will review individuals with plans of care developed by the district that include more than 12 hours per day of personal care or CDPAP
- The panel will make a recommendation as to whether the plan of care is reasonable and appropriate to maintain the individual's health and safety in the individual's home, identify any other Medicaid services that may be appropriate, and include the clinical rational for the recommendation. The recommendation will not recommend specific hours of services or an alternative plan of care.
- The MCO/LDSS must consider the recommendation from the panel when determining whether to authorize more than 12 hours of personal care services per day.

IA will also conduct CHAs and Physician's Orders for Immediate Need Cases

Role Independent Assessor and MCO/LDSS in New PCS/CDPAP Authorization Process



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Independent Assessor Implementation Activities

- Proposed Personal Care and Consumer Directed Personal Assistance Program (CDPAP) regulations to include Independent Assessor, including Physician's Orders and Panel Review of High Needs Cases, and changes to PCS/CDPAP eligibility criteria have posted to: https://health.ny.gov/health_care/medicaid/redesign/mrt2/recommends/index.htm
  - Regulations published in the State Register on July 14, 2020 – begins the 60 day comment period
- Department also working to finalize and submit:
  - A State Plan Amendment
  - 1115 Amendment (Change in eligibility criteria for MLTCP and MAP enrollment)
- Department will continue to engage stakeholders to receive input and feedback as it continues to work with Maximus to develop work flows, notices, and communication processes

Private Home Care Exchange

NY State of Health Private Pay Home Health Care Services Program

- NY State of Health, New York's Official Health Plan Marketplace, is one of the nation's most successful state-based marketplaces and enrolls over 1 in 4 New Yorkers into health coverage
- This new initiative would build on the "marketplace model" and allow New Yorkers to shop for home care services for themselves, their family members or friends from the same trusted source on a private pay basis
- This program is working to launch on November 1, 2020, in time for NY State of Health Open Enrollment Period, on a pilot basis in certain counties, and then expand statewide later in 2021

NY State of Health Private Pay Home Health Care Services Program

- Consumers or their family members will access the NY State of Health website (nystateofhealth.ny.gov) and select the option for “private pay home health care services”
- Then, search for personal care workers in their area and, based on user-generated criteria, including level of need, language preference, or other criteria, “match” with available workers
- Once the personal care worker of their choice is selected, the consumer will schedule a free in-home or telehealth evaluation with the LHCSA
- Then, the consumer will work directly with the LHCSA that employs the personal care worker to determine the consumer’s needs
- Payment for services will be made directly by the consumer to the LHCSA

LHCSA Selection

- NY State of Health will issue an invitation to LHCSAs to participate in the Pilot which will outline the requirements for participation
- All LHCSAs licensed to serve in the pilot area and meet the invitation requirements will be approved and listed on the NY State of Health website

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Home Care

Are you in search of a caregiver who is trained and certified to provide direct in-home care services for a friend, family member or loved one?

If so, NY State of Health now provides you with the ability to search, connect and match with a certified in-home care provider in your area.

LHCSA RFP

Licensed Home Care Service Agency (LHCSA) Value and Efficiencies

- Currently, there are over 1,400 LHCSAs that are licensed to furnish personal care, nursing, occupational therapy, and/or speech therapy services in New York State.
- To promote quality, value and efficiencies among LCHCSAs, the budget authorizes the Department to issue a request for proposals to create efficiencies to qualify a sufficient number of licensed home care services agencies (LHCSAs) to furnish personal care services in Medicaid fee-for-service or to managed care plans.
- LHCSAs will be evaluated on their adherence to technical requirements, including the ability to perform LHCSA services, past performance history, capacity to serve beneficiaries in the designated services areas, and their administrative costs/efficiencies in delivering LHCSA services.
- Expected contracting date July 1, 2021

Wage Parity Enforcement

Impact of Amendments to § 3614-c (5)

For any episode of care to be paid by the government, MCOs, CHHAs & LTHHCPs, LHCSAs, or FIs must deliver a prior written certification to the Commissioner

❖Annual certification requires

- All services for each episode of care are in compliance with §3614-c and
- No portion of the dollars spent shall be returned and
- MCO, CHHA and LTHHCP has received from LHCSA or FI annual statement of wage parity hours and expenses

Impact of Amendments to § 3614-c (6)

MCO, CHHAs & LTHHCPs Contracts with LHCSAs and FIs to include requirement for:

- ❖ Certification, verified by oath, which attests to compliance with §3614-c
  - ❖ False statements in the certification is perjury
- ❖ Information necessary to verify compliance with §3614-c:
  - ❖ Annual statement of wage parity hours and expenses
  - ❖ Independently audited financial statement verifying expenses

Impact of Amendments to § 3614-c (6-a)

MCO, CHHA & LTHHCP Obligations

- Review and assess annual compliance statement of wage parity hours and expenses from LHCSA and FI
- Written referral to DOL for any reasonably suspected failure to conform to wage parity requirements

Impact of Amendments to § 3614-c (7-a)

MCOs, CHHAs, LTHHCPs, LHCSAs and FIs that willfully disregard wage and supplement minimums shall be guilty of a misdemeanor and upon conviction:

1. First offense – fine of $500 or imprisonment for 30 days or both
2. Second offense – fine of $1,000, forfeiture of contract where the violation occurred, and loss of payment for services provided.

Impact of Amendments to § 3614-c (10)

An MCO, CHHA or LTHHCP shall not be liable for recoupment of payments or other penalties under §3614-c if it:

- ❖ Reasonably and in good faith collects the certifications and information required by §3614-c and
- ❖ Conducts the monitoring and reporting required by §3614-c

Impact of Amendments to Labor Law § 195

Adds information on benefit portion of the minimum rate of home care aide total compensation as defined in §3614-c to

a. Hiring notices
b. Statement with every payment of wages

Requires retention for 6 years records to be able to prove employer is meeting 3614-c.

Fair Hearing Reform

Fair Hearing Reform

- A regulatory update to the fair hearing process was published in the State Register on July 8, 2020
- This regulatory package proposes to effectuate the following changes:
  - Alignment with changes to federal rules promulgated in 2016 (42 CFR Part 438), including requiring administrative exhaustion of plan internal appeals
  - Hearing Officer is to “dismiss” a case jurisdictionally if administrative exhaustion (or deemed exhaustion) did not occur
  - Hearing Officer is limited to granting relief based on the actual relief sought and benefits offered by the plan
- MRT II recommendation contained in the enacted budget contemplates a second regulatory update
  - Considerations around new evidence raised during the fair hearing when such evidence was not provided or available during the plan appeal
  - Affording some degree of deference to the clinical decision-making contained in the care plan, especially with IA and independent physician panel now included in the assessment process
  - Other changes: additional data reporting, virtual/telephonic hearings, packet distribution, narrower scheduling windows, and additional training

General Discussion