



Date: May 26, 2016

DLTC Numbered Memo 2016-01

To: Waiver Agency Directors, CLTS Supervisors and Leads

From: Curtis J. Cunningham
Interim Administrator

A handwritten signature in blue ink, appearing to read "Curtis J. Cunningham".

**Children's Long-Term Support Waiver Program:
Autism Treatment Transition and
Access to ForwardHealth Behavioral Treatment Benefit**

Purpose

The purpose of this policy is to communicate the requirements for accessing behavioral treatment services for participants enrolled in the Children's Long-Term Support (CLTS) Waiver Program.

Background

The Medicaid Home and Community-Based Services (HCBS) are authorized in § 1915(c) of the Social Security Act, and permit a state to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State Plan and other federal, state, and local public programs as well as the supports that families and communities provide.

In July of 2014, the Centers for Medicare & Medicaid Services (CMS) gave guidance to state Medicaid agencies specific to federal Medicaid funding of treatment services for individuals diagnosed with autism spectrum disorder (ASD). This guidance directed states to cover autism treatment services under the Medicaid State Plan, rather than through an HCBS waiver program.

Subsequent to this guidance, Wisconsin began the process of transitioning behavioral treatment for children with ASD from the CLTS Waiver Program to a newly created Behavioral Treatment benefit under Wisconsin's Medicaid State Plan (identified as ForwardHealth), consistent with the guidance provided.

The new benefit went into effect January 1, 2016.

During the entire 2016 calendar year, CLTS Waiver participants currently receiving behavioral treatment will have his or her behavioral treatment services transitioned from being waiver-funded to being accessed via the ForwardHealth benefit. All behavioral treatment services for CLTS Waiver participants will transition to the ForwardHealth benefit by no later than December 31, 2016.

Policy

Effective January 1, 2017, waiver funding for services covered under the behavioral treatment benefit will not be allowed in any circumstance.

Waiver funding is the funding of last resort, and, as such, cannot duplicate or supplant funding of services that are the legal responsibility of another program or entity, including ForwardHealth. Children with behavioral treatment needs must be referred to a qualified provider and the ForwardHealth benefit for these services.

In accordance with 42 CFR § 433 Subpart D, federal financial participation (FFP) may not be claimed for services when another third party (e.g., private health insurer or other federal or state program) is legally liable and responsible for the provision and payment of the service. This requirement prohibits payment for any service that the child is eligible to receive through the Medicaid State Plan, including services covered under Early and Periodic Screening, Diagnostic, and Treatment (EPSDT), private health insurance, services funded by the Individuals with Disabilities Education Act (IDEA), or vocational rehabilitation services funded under § 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

Identifying CLTS Participants for Access to the Behavioral Treatment Benefit

Behavioral treatment is evidence-based treatment provided to increase the ability of a child to effectively function within their immediate environment and the larger society, and relies on basic learning principles derived from classical and operant conditioning.

The goal of behavioral treatment is to prepare the child and family for successful long-term participation in normative settings and activities at home, in school, and in the community.

For children with ongoing, significant developmental needs, behavioral treatment should result in skill acquisition and behavioral improvement that allows the child access to less restrictive, more cost-effective systems of care. Currently, ForwardHealth covers the Applied Behavior Analysis (ABA) and Early Start Denver Model (ESDM) treatment modalities under the behavioral treatment benefit.

Behavioral treatment is provided either by a licensed professional or by paraprofessionals under the direct and frequent supervision of a licensed professional.

Some examples of the types of situations children might encounter that necessitate their involvement with the services provided by behavioral treatment professionals include the presence of significant gaps in learning as compared to age-equivalent peers, the display of challenging behaviors (e.g., physical aggression, self-injurious behaviors), and/or the manifestation of atypical behavior patterns that interfere with a child's safety or ability to successfully integrate within their community and that can be reasonably assessed to be remediated using basic learning principles treatment.

Responsibilities

Waiver agencies are responsible for assessing the support needs of enrolled participants. These services are identified on the child's Individual Service Plan (ISP). As a part of this process and in relationship to the behavioral treatment transition, the waiver agency is responsible for ensuring behavioral treatment is no longer a service authorized through the CLTS Waiver Program and that services are not duplicated across the CLTS Waivers and the Medicaid State Plan.

The Department of Health Services (DHS) is the administrative authority responsible for oversight to ensure compliance for the CLTS Waiver Program with federal regulations. DHS will monitor compliance of this policy and procedure through the annual onsite record review process, the Single State Audit, and the CMS Payment Error Rate Measurement (PERM) audit. As with any of these monitoring activities, in circumstances of noncompliance, the waiver agency is subject to corrective action plans and recoupment of funds when appropriate.

Procedure

For all CLTS Waiver participants, the following procedure must be used when a child has an assessed behavioral treatment need and the existing service delivery identified falls within the aforementioned section identifying CLTS participants waiver agencies should refer to the ForwardHealth Behavioral Treatment benefit:

1. Waiver agency personnel work with families of CLTS Waiver participants through a person-centered planning process that addresses health and long-term service and support needs, with individually identified goals and preferences. This process will assist the child in achieving:
 - a. Personally defined outcomes.
 - b. Services and supports in an integrated community setting.
 - c. Delivery of services in a manner that reflects personal preferences and choices.
 - d. Services and supports that contribute to ensuring health and welfare.
2. Identify and authorize waiver supports and services appropriate to meet the child's assessed needs.
3. Waiver agency personnel must remain diligent in ensuring that behavioral treatment, as identified in this policy and as referenced by ForwardHealth, is not disguised as other services and paid through the CLTS Waiver Program.

Note: ForwardHealth policy and operations guidance is available in the ForwardHealth online provider handbook:

- <https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx>
4. Waiver agency staff must not allow the use of CLTS waiver funding and payment through the third party administration (TPA) claims process for services not waiver allowable. Waiver services authorized and paid with waiver funds are subject to audit discovery and disallowance from federal funding where applicable.

Procedure for Current CLTS Waiver Participants:

CLTS Waiver participants currently receiving autism treatment and other services through the waiver will transition to behavioral treatment benefit under ForwardHealth as defined in the transition schedule submitted by the waiver agency.

1. Existing behavioral treatment with service delivery that falls within the definition of behavioral treatment must be submitted to ForwardHealth for prior authorization (PA).
2. Following the adjudication of the PA, the waiver agency will update the ISP, end dating autism treatment from waiver funding.
3. In the event a denial for behavioral treatment is adjudicated, participants can appeal this denial through the ForwardHealth program.
4. The updated ISP for a waiver participant following the transition will identify waiver supports and services based on the assessed needs of the child.

5. Waiver agency personnel should identify if the child's behavioral treatment PA has been adjudicated; if not, contact the provider regarding the status.

Procedure for New CLTS Waiver Participants:

New CLTS Waiver participants with an assessed need for behavioral treatment supports as described in the ForwardHealth benefit must be directed to identify a ForwardHealth- enrolled provider to submit a PA to ForwardHealth.

1. Waiver agency can assist with identifying the availability of behavioral treatment and other Medicaid services.
2. Waiver agency establishes an ISP authorizing only waiver allowable services funded by CLTS.

This policy and procedure is intended for use in assisting waiver agencies and service providers in effectively identifying behavioral treatment services that require ForwardHealth authorization for CLTS Waiver participants.

DHS appreciates waiver agencies' diligent adherence to this guidance.

Questions regarding this memo should be directed to DHSCLTS@dhs.wisconsin.gov.
<https://www.dhs.wisconsin.gov/clts/waiver/autism/index.htm>

MEMO WEB SITE:

<https://www.dhs.wisconsin.gov/dlts/memos/index.htm>

cc: Administrators/Human Service Area Coordinators