

APPENDIX K: Emergency Preparedness and Response

Background:

This standalone appendix may be utilized by the state during emergency situations to request amendment to its approved waiver. It includes actions that states can take under the existing Section 1915(c) home and community-based waiver authority in order to respond to an emergency. Other activities may require the use of various other authorities such as the Section 1115 demonstrations or the Section 1135 authorities.ⁱ This appendix may be completed retroactively as needed by the state.

Appendix K-1: General Information

General Information:

- A. State: New York

- B. Waiver Title:

| |
|-------------------------------------------------------------------------------------------------------------------------|
| Office for People with Developmental Disabilities (OPWDD) Comprehensive Home and Community Based Services (HCBS) Waiver |
|-------------------------------------------------------------------------------------------------------------------------|

- C. Control Number:

| |
|----------------|
| NY 0238.R06.02 |
|----------------|

- D. Type of Emergency (The state may check more than one box):

| | |
|----------------------------------|-----------------------------|
| <input checked="" type="radio"/> | Pandemic or Epidemic |
| <input type="radio"/> | Natural Disaster |
| <input type="radio"/> | National Security Emergency |
| <input type="radio"/> | Environmental |
| <input type="radio"/> | Other (specify): |

E. **Brief Description of Emergency.** *In no more than one paragraph each, briefly describe the: 1) nature of emergency; 2) number of individuals affected and the state’s mechanism to identify individuals at risk; 3) roles of state, local and other entities involved in approved waiver operations; and 4) expected changes needed to service delivery methods, if applicable. The state should provide this information for each emergency checked if those emergencies affect different geographic areas and require different changes to the waiver.*

New York seeks to amend the original Appendix K to the OPWDD Comprehensive 1915(c) HCBS Waiver serving people with intellectual and/or developmental disabilities (I/DD) HCBS waiver .238 (R06.01) approved on April 7, 2020. The following changes remain in effect:

- a) Allow day services to be delivered in alternative sites;
- b) Allow the services in alternative sites to be authorized prior to updating the participant's Life Plan;
- c) Allow Residential Habilitation services to be provided in alternate sites, including a non-certified location or certified by the State as an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID);
- d) Allow Residential Habilitation services to be delivered temporarily out-of-state;
- e) Allow certain habilitation services to be delivered via telehealth in accordance with HIPAA requirements;
- f) Allow a temporary modification of staff training and qualifications if new staff are needed to provide essential services;
- g) Temporarily extend the timeframes for completion of Level of Care (LOC) assessments and Plan of Care review when the Care Manager cannot safely contact the participant;
- h) Allow modifications to person-centered service planning;
- i) Allow options for retainer day payments for Community Habilitation, Day Habilitation and Prevocational Service providers;
- j) Increase Residential Habilitation services reimbursement to address increase in day-time staffing needs;
- k) Increase fees for Respite and Community Habilitation services to address additional equipment and staff training needs;
- l) Modify incident reporting requirements;
- m) Waive HCBS Setting requirements during the state of emergency;
- n) Postpone OPWDD Division of Quality Improvement (DQI) reviews;
- o) Allow extension of time frames for cost reporting submissions for both State and not-for-profit providers.

This amendment includes only additional changes requested by New York from CMS. All approved Appendix K authority is assumed to continue if not modified in this amendment. Additional changes, which are highlighted in this document, include:

- This amendment extends the Appendix K authority for the full year permissible under this emergency authority (March 7, 2020 to March 6, 2021).
- Allows Respite to be added to the list of services with remote delivery
- Sunsets retainer payments for Day Habilitation, Prevocational Services and Community Habilitation provider agencies and rate increases on 7/21/2020.
- The changes to the service plan, including the amount, duration and scope of the service plan will be updated in the Life Plan as soon as possible but not later than 60 days after the approval of the service or change (changed from initiation of the service or change).
- Amends language to comply with the new COVID-19 Retainer payment guidance.
- Timeframes for the submission of the CMS 372s will be extended
- References to remote delivery of services are included in the Respite service definition

F. Proposed Effective Date: Start Date: 3/7/20 Anticipated End Date: 3/6/21

Appendix K-2: Temporary or Emergency-Specific Amendment to Approved Waiver

Temporary or Emergency-Specific Amendment to Approved Waiver:

These are changes that, while directly related to the state's response to an emergency situation, require amendment to the approved waiver document. These changes are time limited and tied specifically to individuals impacted by the emergency. Permanent or long-ranging changes will need to be incorporated into the main appendices of the waiver, via an amendment request in the Waiver Management System (WMS) upon advice from CMS.

b. X Services

i. X Temporarily modify service scope or coverage. [Complete Section A- Services to be Added/Modified During an Emergency.]

The State seeks to modify the service definition and limits for Respite and Community Habilitation services to allow people who live in a certified residence to receive Respite services or Community Habilitation in the residence when the following is true:

- The person's day service is suspended due to the emergency or the person is unable to participate in the day service;
- No day services can be delivered in the residence, and
- The daily Respite or Community Habilitation billing does not exceed six (6) hours of service per day, five (5) days per week.

Note, that the State is requesting the authority to implement either this provision or the Residential Habilitation rate adjustment based upon operational needs. The State will not implement both Respite and Community Habilitation billing for in-residence services for a Residential Habilitation recipient if the person's residence has also received the rate adjustment described in Item f below.

For the period of the emergency, the State will allow the remote delivery of the following services through the telephone or other technology in accordance with HIPAA requirements:

- Day Habilitation
- Community Habilitation
- Prevocational Services
- Supported Employment (SEMP)
- Pathway to Employment
- Support Broker
- Respite

f. X Temporarily increase payment rates [Provide an explanation for the increase. List the provider types, rates by service, and specify whether this change is based on a rate development method that is different from the current approved waiver (and if different, specify and explain the rate development method). If the rate varies by provider, list the rate by service and by provider].

The State is amending Residential Habilitation rates for Supervised residences to compensate providers for additional hours of staffing needed when day services are suspended, or the resident is unable to attend for health and safety reasons. The current rate methodology will be adjusted upward to reflect the enhanced staffing needs in the residence for increased day time staffing hours. Supervised Residential Habilitation providers will not be eligible for this enhanced rate if the provider is also billing a retainer day for the person's day services, or Respite services (see K-2 (b)(i)).

Respite and Community Habilitation providers may receive an increased fee adjustment for the delivery of services throughout the duration of the emergency to allow additional funding for Personal Protective Equipment (PPE) for staff and increased Direct Support Professional training costs regarding COVID-19 procedures. Fee increases will not exceed more than 25% of the standard fee.

These provisions will sunset on 7/21/20.

Following the end of retainer payments, although rates will not change, the day habilitation and site-based prevocational services program day duration required for billing will be at least half of the currently required service duration. Prior to this modification, Day Habilitation and Site Based Prevocational Services were reimbursed in full units requiring four hours of service and half units requiring two hours of service. This modification will reduce the threshold of face-to-face service time required to bill either a full unit (now two hours minimum) or half unit of service (now one hour minimum). The purpose of the modification is to ensure that fixed costs are covered by the reduced service utilization expected during the Pandemic and with the expectation that providers will continue to work in partnership with OPWDD to make more available non-center-based and telemodalities in an effort to increase community involvement of waiver enrollees and to protect the delivery of services during future emergencies. This service duration flexibility will sunset on October 14, 2020.

g. X Temporarily modify person-centered service plan development process and individual(s) responsible for person-centered service plan development, including qualifications. [Describe any modifications including qualifications of individuals responsible for service plan development, and address Participant Safeguards. Also include strategies to ensure that services are received as authorized.]

A temporary modification of face-to-face requirements for Health Home and Basic HCBS Plan Support providers has been instituted by New York State. This temporary modification will remain in effect until it is rescinded by NYSDOH. In lieu of face-to-face contact, Care Managers may utilize telephonic or telehealth capabilities in accordance with HIPAA requirements

The requirement that at least one (1) face-to-face Life Plan meeting is conducted each year is modified during the period of the state of emergency. The Life Plan meeting may be conducted using telephonic or other technology in accordance with HIPAA requirements to allow the individual, his or family, the Care Manager, and providers to meet to discuss and approve the person's Life Plan. The State may modify timeframes or processes for the Life Plan as described below:

- Adjustments to the Life Plan may be approved with a retroactive approval date for service needs identified to mitigate harm or risk directly related to COVID-19 impacts. The changes to the service plan, including the amount, duration and scope of the service will be updated in the Life Plan as soon as possible but not later than 60 days after **the approval** of the service or change.
- The use of e-signatures that meets privacy and security requirements will be added as a method for the participant or legal guardian signing the Life Plan to indicate approval of the plan. Services may start while waiting for the signature to be returned to the case manager, whether electronically or by mail. Signatures will include a date reflecting the Life Plan meeting date.

Signatures are obtained at in-person meetings, via mailed 'hard copies' and electronic signatures may be used. The documentation of verbal approval or e-mail approval of changes and additions to the Life Plan will suffice as authorization for providers to deliver services. Verbal approval is only used to initiate services while awaiting the signed document.

When postponing face-to-face visits, Care Managers should carefully coordinate next steps with the person and other providers. If the person has immediate Care Management needs, for example, the person requires assistance with pharmacy or accessing food and other basic needs, the Care Manager should ensure a frequency of contact sufficient to keep the person healthy and safe.

j. X Temporarily include retainer payments to address emergency related issues. [Describe the circumstances under which such payments are authorized and applicable limits on their duration. Retainer payments are available for habilitation and personal care only.]

Retainer days are limited to up to three episodes of 30 consecutive days per individual.

Eligible providers will receive retainer payments for an initial period at 100% of the provider's rate in accordance with the individual's scheduled utilization prior to the state of emergency. This initial period is for the dates of March 18, 2020 through April 15, 2020. Thereafter, the state will make retainer payments to agencies with day service utilization below 80% of the average monthly utilization rate for the period of July 2019 through December 2019.

Agencies providing day services including habilitation and prevocational services that include personal care as a service component may bill retainer payments. The rate for retainer payments will be set at 100 percent of the agency's current rate and after the initial period will be payable at no more than 80% of the average monthly units billed for the period of July 2019 through December 2019 for the average number of participants served.

- Retainer payments will be provided in circumstances in which facility closures are necessary due to COVID-19 containment efforts.
- Retainer payments attributable to each participant will be provided in circumstances in which the agency's overall attendance and utilization for the service drops to below 80% of the monthly average for the period of July 2019 through December 2019.

After the initial period, Retainer payments will not exceed the anticipated 80% of monthly average of the agency's total billing and will be attributable to individuals and not paid to agencies as a lump sum. Retainer day payments are not duplicative of services provided during the timeframe covered by the retainer day payment.

In order for providers to receive retainer payments, the state requires an attestation that addresses the guardrails below. The state demonstrates how the provider attestation aligns with these guardrails in state policy:

- Limit retainer payments to a reasonable amount and ensure their recoupment if other resources, once available, are used for the same purpose. The retainer payment will not exceed the payment for the relevant service;
- The state may specify that a retainer payment will be made at a percentage of the current rate, or a state may specify retainer payments will not be made to a setting until attendance is below an identified percentage of the enrollment (e.g., 75 percent).
- Collect an attestation from the provider acknowledging that retainer payments will be subject to recoupment if inappropriate billing or duplicate payments for services occurred (or in periods of disaster, duplicate uses of available funding streams), as identified in a state or federal audit or any other authorized third-party review. Note that "duplicate uses of available funding streams" means using more than one funding stream for the same purpose.
- Require an attestation from the provider that it will not lay off staff, and will maintain wages at existing levels.
- Require an attestation from the provider that they had not received funding from any other sources, including but not limited to unemployment benefits, Small Business Administration loans or the Provider Relief Fund, that combined with retainer

payments would exceed their revenue for the last full quarter prior to the PHE, or that funding from any other sources, when combined with the retainer payments at the level provided by the state, would not result in their revenue exceeding that of the quarter prior to the PHE.

- If a provider had not already received revenues in excess of the pre-PHE level but receipt of the retainer payment in addition to those prior sources of funding results in the provider exceeding the pre-PHE level, any retainer payment amounts in excess would be recouped.
- If a provider had already received revenues in excess of the pre-PHE level, retainer payments are not available.

Retainer Payments under the above provision will not be made after 07/21/20.

Retainer payments may also be made to a Fiscal Intermediary (FI) to retain 'self-hired' staff who are unable to work because of the individual receiving services' or his/her family is placed by a public health official in quarantine or self-isolation for the prevention to the transmission of COVID-19. Retainer payments made to a FI are passed on to self-hired staff.

This is available for Community Habilitation services and each community habilitation claim is paid at 80% of the regular fee. Retainer payments to a FI are limited to one continuous 30-day period of allowable billing days at a schedule not to exceed the schedule outlined in the approved self-directed budget. The FI will need to maintain and provide reporting to OPWDD regarding the usage of retainer payments.

m. X Other Changes Necessary [For example, any changes to billing processes, use of contracted entities or any other changes needed by the State to address imminent needs of individuals in the waiver program]. [Explanation of changes]

OPWDD's DQI certification survey staff may postpone or decrease the sample sizes for the person-centered reviews (PCRs) and agency reviews for the duration of the state of emergency due to redeployment of DQI Surveyor resources to the NYS COVID-19 emergency response. Therefore, the performance metrics and DOH oversight activities related to these DQI reviews described throughout the OPWDD HCBS Waiver will be impacted for future CMS 372 Report submissions.

The timeframes for the submission of the CMS 372s will be extended as needed pursuant to the emergency. In addition, the state may suspend the collection of data for performance measures other than those identified for the Health and Welfare assurance and notes that as a result the data will be unavailable for this time frame in ensuing reports due to the circumstances of the pandemic.

Consolidated Fiscal Report (CFR) submission deadlines for OPWDD HCBS Waiver providers and NYS will be extended throughout the duration of this state of emergency without financial penalties and penalties for late submissions will be modified for 60-days after the New York State Governor indicates that the state of emergency is no longer in effect. CFR submission is a state regulatory requirement that is described in our HCBS Waiver.

Contact Person(s)

A. The Medicaid agency representative with whom CMS should communicate regarding the request:

First Name: Janet
Last Name: Zachary-Elkind
Title: Deputy Director
Agency: New York State Department of Health, Office of Health Insurance Programs
Address 1: 99 Washington Avenue
Address 2: Suite 720
City: Albany
State: New York
Zip Code: 12210
Telephone: 518-473-0919
E-mail: Janet.zachary-elkind@health.ny.gov
Fax Number: 518-486-2495

B. If applicable, the State operating agency representative with whom CMS should communicate regarding the waiver is:

First Name: Katherine
Last Name Marlay
Title: Deputy Commissioner
Agency: New York State Office for People With Developmental Disabilities
Address 1: 44 Holland Ave.
Address 2: Click or tap here to enter text.
City Albany
State New York
Zip Code 12229
Telephone: 518-486-6466
E-mail Katherine.Marlay@opwdd.ny.gov
Fax Number

8. Authorizing Signature

Signature:

Date: 8/11/20

_____/s /_____
State Medicaid Director or Designee

First Name: Donna
Last Name Frescatore
Title: State Medicaid Director
Agency: New York State Department of Health
Address 1: 99 Washington Avenue
Address 2: Suite 211
City Albany
State New York
Zip Code 12210
Telephone: 518-474-3018
E-mail Donna.frescatore@health.ny.gov
Fax Number 518-486-1346

Section A---Services to be Added/Modified During an Emergency

Complete for each service added during a time of emergency. For services in the approved waiver which the state is temporarily modifying, enter the entire service definition and highlight the change. State laws, regulations and policies referenced in the specification are readily available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

Service Specification

Service Title: Respite

Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:

Service Definition (Scope):

The following language is additive to the state's current approved waiver definition for this service:

For the period of the emergency, people who live in a certified residence may receive Respite services in the residence when the following is true:

- The person's day service is suspended due to the emergency or the person is unable to participate in the day service;
- No day services can be delivered in the residence, and
- The daily Respite billing does not exceed six (6) hours of service per day, five (5) days per week.

Note, that the State is requesting the authority to implement either this provision or the Residential Habilitation rate adjustment based upon operational needs. The State will not implement both Respite or Community Habilitation billing for in-residence services for a Residential Habilitation recipient if the person's residence has also received and the rate adjustment described in K-2(f).

For the period of the emergency, as defined by an Executive Order, the State will allow the remote delivery of Respite services in accordance with HIPAA requirements where:

- a provider exercising good clinical judgment determines a telehealth encounter is appropriate for the delivery of services to an individual;
- the delivery of services can be effectuated via verbal prompting only; and
- the health and safety of the individual continues to be met via this service modality.

Specify applicable (if any) limits on the amount, frequency, or duration of this service:

Provider Specifications

| | | | | |
|-----------------------------------------------------|--------------------------|-------------------------|-------------------------------------|-------------------------------------|
| Provider Category(s) <i>(check one or both):</i> | <input type="checkbox"/> | Individual. List types: | <input checked="" type="checkbox"/> | Agency. List the types of agencies: |
| | | | | |
| | | | | |
| | | | | |

| | | | | |
|----------------------------------------------------------------------------------|--------------------------|----------------------------|-------------------------------------|----------|
| Specify whether the service may be provided by <i>(check each that applies):</i> | <input type="checkbox"/> | Legally Responsible Person | <input checked="" type="checkbox"/> | Relative |
|----------------------------------------------------------------------------------|--------------------------|----------------------------|-------------------------------------|----------|

Provider Qualifications *(provide the following information for each type of provider):*

| | | | |
|----------------|--------------------------|------------------------------|---------------------------------|
| Provider Type: | License <i>(specify)</i> | Certificate <i>(specify)</i> | Other Standard <i>(specify)</i> |
|----------------|--------------------------|------------------------------|---------------------------------|

| | | | |
|-------------------------------------------------------|--|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Non-profit organization or State</p> | | | <p>During the period of the emergency, Direct Support Professionals may deliver HCBS Waiver services, even if not all training stipulated in 14 NYCRR Part 633.8 may have been completed. This would allow newly hired Direct Support Professionals, and a provider agency's existing administrative staff who have not yet completed all training requirements to serve in a direct support capacity immediately to meet health and safety needs of participants, if essential staffing is not otherwise available. Within sixty (60) days of the cessation of the state of emergency, any lapsed or missing training must be completed.</p> <p>During the period of the emergency, provider agencies will have an exemption from requirements of 14 NYCRR Part 633, "Protections of Individuals Receiving Services," NY Mental Hygiene law and NY Social Services law regarding Criminal Background Check (CBC) screening, Staff Exclusion List (SEL) check, State Central Register (SCR) check and Mental Hygiene Law 16.34 (MHL 16.34) check. These exemptions allow an employee to begin work prior to the receipt of the CBC results and completion of the training requirements through 60-days after the New York State Governor indicates that the state of emergency is no longer in effect.</p> <p>The new employee is screened against the Medicaid Excluded Provider lists maintained by the NYSDOH and the Health and Human Services Office of the Inspector General. In no event, will an employee be permitted to work unsupervised with individuals until the SEL check is completed and the CBC submitted. If upon the receipt of background check information it is found that the employee is unqualified, the staff person will not be allowed to continue to render services.</p> |
| <p>Verification of Provider Qualifications</p> | | | |

| Provider Type: | Entity Responsible for Verification: | | Frequency of Verification | |
|---------------------------------------------------------------------|--------------------------------------|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| non-profit organization or state | . | | OPWDD's Division of Quality Improvement (DQI) certification survey staff may postpone or decrease the sample sizes for the Person-Centered Reviews (PCRs), Agency Reviews, and Site Reviews for the duration of the emergency due to redeployment of DQI Surveyor resources to the NYS COVID-19 crisis response. Therefore, the performance metrics and DOH oversight activities related to these DQI reviews described throughout the OPWDD HCBS Waiver will be impacted for future CMS 372 Report submissions. | |
| Service Delivery Method | | | | |
| Service Delivery Method <i>(check each that applies):</i> | X | Participant-directed as specified in Appendix E | X | Provider managed |

ⁱ Numerous changes that the state may want to make necessitate authority outside of the scope of section 1915(c) authority. States interested in changes to administrative claiming or changes that require section 1115 or section 1135 authority should engage CMS in a discussion as soon as possible. Some examples may include: (a) changes to administrative activities, such as the establishment of a hotline; (b) suspension of general Medicaid rules that are not addressed under section 1915(c) such as payment rules or eligibility rules or suspension of provisions of section 1902(a) to which 1915(c) is typically bound.