HCBS Settings: Implications, Reactions, and Innovations of States to the COVID-19 Pandemic

Division of Long-Term Services and Supports
Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services
Objectives of the Training

• Share a broad overview, analysis and summary of the number of states using the various authorities and flexibilities available for home and community-based services (HCBS) to address the COVID-19 public health emergency;

• Include a brief description of the adaptations that states have made in order to continue work on their Statewide Transition Plans (STPs) and heightened scrutiny reviews while balancing the demands of COVID-19;

• Share two states experiences with the COVID-19 pandemic; its impact on individuals and families receiving HCBS and on providers; states’ reaction to the pandemic; and the development of creative, innovative alternatives to the delivery of HCBS.
A suite of tools is available to facilitate states’ flexibilities in responding to the public health emergency, initially declared on January 27, 2020 and extended on July 25, 2020 for 90 days:

- 1915(c) waiver Appendix K amendments: Emergency Preparedness and Response and COVID-19 Addendum;
- Demonstration opportunity under Section 1115(a) of the Social Security Act;
- Medicaid State Plan Disaster Relief State Plan Amendment (SPA) under the 1915(i) and 1915(k) benefits;
- 1135 Waivers.
All 1915(c) waiver Appendix K amendments, current 1115 Attachment K, and HCBS-related 1135 waiver requests approved by CMS as of June 1, 2020 were reviewed. Information from all requests has been gathered and prepared for analysis to provide a broad overview of state requests.
### Number of Requests by Type*

<table>
<thead>
<tr>
<th>1915(c) Waiver Appendix K Amendments Approvals</th>
<th>1915(c) Separate Appendix K Amendments/Combined Appendix K Amendments Approvals</th>
<th>HCBS Related 1135 Waiver Approvals</th>
<th>1115(a) or 1115 Waivers Attachment K Approvals</th>
<th>1915(i) or 1915(k) State Plan Disaster Relief SPA Approvals</th>
</tr>
</thead>
<tbody>
<tr>
<td>71</td>
<td>87S/49C</td>
<td>26</td>
<td>7</td>
<td>5</td>
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</table>

Requests received from all states and the District of Columbia except Alabama and Idaho.

*All of the tables included here reflect approvals by CMS as of June 1, 2020*
# Number of Times States Submitted Requests

<table>
<thead>
<tr>
<th>Type of Request</th>
<th>One Submission</th>
<th>Two Submissions</th>
<th>Three Submissions</th>
<th>Four Submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>HCBS Related 1135 Waiver</td>
<td>22 states</td>
<td>2 states</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1915(c) Waiver Appendix K Amendment</td>
<td>24 states</td>
<td>9 states</td>
<td>4 states</td>
<td>3 states</td>
</tr>
<tr>
<td>1115 Waiver</td>
<td>4 states</td>
<td></td>
<td>1 state</td>
<td></td>
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</tbody>
</table>
Most Selected Options by States Using 1915(c) Waiver Appendix K Amendments (N=48)

Number of States Selecting Option

- Modify services: 47
- Modify provider qualifications: 42
- Other (e.g. disenrollment policy, delay reports): 35
- Allow retainer payments: 35
- Modify person-centered planning: 34
- Allow payment for HCBS in institutional settings: 32
- Changes to participant safeguards: 32
- Allow virtual LOC determinations: 31
- Increase or modify payments rates: 30
- Extend dates for LOC determinations: 29
- Other (e.g. disenrollment policy, delay reports): 29
Use of the Appendix K COVID Addendum

- 38 out of 48 states (79%) submitted an Appendix K COVID Addendum
- 188 1915(c) and 5 1115 HCBS waivers covered through the COVID Addendum
- 17 states (35%) requested different waivers and/or additional authorities across waivers, or submitted a COVID Addendum for some but not all waivers
- Variations within states likely had separate agencies prepare submissions or targeted authorities by target group
  - The main difference occurring between aging and disabled versus IDD waivers
  - Additional variability noted between children’s and adult waivers
State Use of the 1915(c) Waiver Appendix K Amendment COVID Addendum by Frequency of Selection (N=38)

Number of States using COVID Addendum Options

- Waive visitors settings requirement: 37
- Allow extension for reassessments and reevaluations: 37
- Add electronic service delivery: 36
- Add electronic method of signing off on required documents: 35
- Allow virtual/remote evaluations, assessments and person-centered service...: 35
- Allow spouses, parents of minor children be paid as provider: 26
- Allow family member to be paid as provider: 24
- Modify providers of home-delivered meals: 21
- Allow other practitioners: 19
- Case management and Conflict of Interest: 15
- Add Home Delivered Meals: 12
- Add Medical Equipment and Supplies: 9
- Add Assistive Technology: 3
HCBS Related 1135 Waiver Flexibilities (N=24)

- Submitted an HCBS related 1135 request: 24 states
- Allow verbal agreement as a signature for the PCP: 16 states
- Waiver of HCBS Settings requirements: 16 states
- Allow payment to legally responsible relative: 7 states
- Waive 1915(i) LOC timeline: 4 states
- Waive 1915(c) LOC timeline: 4 states
- Waive Conflict of Interest: 4 states
- Waive CFC 1915(k) LOC timeline: 3 states
State Alternatives to On-Site Visits During COVID-19

• 38 states participated in small group monthly calls during April, May, July and August of 2020 to share progress, challenges, strategies related to implementing the home and community-based (HCBS) settings rule.

• Beginning in April 2020, state representatives began to express their concern related to the continuation of on-site visits during COVID-19.

• In addition, 3 states discussed alternative strategies to on-site visits during one-on-one direct technical assistance calls with CMS.
State Alternatives to On-Site Visits During COVID-19: Cease or Delay of On-Site Visits

• Due to the health risks and restrictions imposed by the COVID-19 pandemic, 11 of the states included in this analysis, ceased their on-site validation and monitoring visits.

• Faced with this dilemma, states developed a variety of alternative strategies to on-site visits, in-person interviews with individuals receiving services, other STP activities and heightened scrutiny reviews.

• Rather than halting their validation and monitoring activities, 7 states delayed their on-site visits by shifting their work to other areas, buying time until they can get back in the field, including continuing with desk reviews of validation activities or completing provider interviews over the phone.
States that did not want to halt or delay validation and monitoring activities leveraged technology to continue their work: phone calls, FaceTime, Google Hangouts, Google for Business, Zoom, Microsoft Teams, WebEx to continue consumer interviews and to participate in virtual validation and monitoring visits:

- 5 states restricted phone calls to consumer interviews;
- 1 state performed provider validation visits via phone;
- 1 state conducted a reevaluation activity over the phone.
State Alternatives to On-Site Visits During COVID-19: Video Conferencing and Online Tools

• 11 states used video conferencing to move forward on their validation and monitoring visits:
  – Of these, 1 state used video conferencing to focus on technical assistance including providers’ use of the computer or phone to show the state the physical infrastructure relating to questions about the setting itself.

• 3 states used online review tools to collect provider information.
State Alternatives to On-Site Visits During COVID-19: Challenges

Challenges with Virtual Validation and Monitoring Visits

- Individuals with limited phone minutes;
- Individuals struggling to recall what life was like before COVID-19;
- Difficulty in observing non-verbal communication when not in person;
- Some individuals rely on sign language or can respond, but not with words (nodding, head shaking, etc.);
- Provider’s lack of internet access.
Two states will share their experiences with the COVID-19 pandemic:

Connecticut will discuss the state’s work with employment, day services and stakeholders; and the development of innovative alternatives and design strategies for reopening services.

Oregon will share its focus on keeping people connected; employment and pre-employment services; contingency payments and delivery of services.
A Unique Approach During Uncertain Times
Responding to the Unexpected

- Rapid Response - Strategic – but quick
- Employment Services Remained Open
- Appendix K development
- Successes & Lessons Learned
The 3 Pillars that built the environment for creativity

- Ensuring Employment & Day Providers remain whole
  - Separate out billing from payment
- Private Providers - No Staff Layoffs
- Daily or weekly contact with each person they support
- Lessons Learned
  - Establishing consistent communication pertaining to funding and fiscal related concerns
Communication & Outreach

• Established a consistent communication strategy for Individuals, Families, Providers and DDS staff
  • All communication through 1 person for consistent messaging
  • Establish website COVID focus for Providers and Families
  • 2x per day meetings with DDS Managers and above
  • Established broad based distribution lists with Family groups, Advocacy Groups, DD Council, and Disability Rights

• Established a weekly Provider meeting to ensure:
  • Access to DDS staff
  • Present innovation
  • Discuss Impact of COVID-19 and moving forward

• Encouraged Providers to work together and consider reassigning Employment and Day staff to residential and in-home supports
• Solicited Input and Feedback from All Stakeholders regarding:
  • Impact of COVID-19,
  • Reopening Preparations,
  • Concerns and Successes and
  • Embracing the New Normal.

• The use of Surveys to influence our next steps - we are not alone.
  • Family development of survey
  • Family Survey

• Lessons Learned
  • Reach to all people and families not possible
  • Messaging in the new world
Encouraging Innovation & Creativity

- Developed documents highlighting best practices and new platforms
  - Provider Innovation
  - Virtual Technology
  - Re-Opening Plan Best Practice
- Highlighting Providers by name and offering resources
- Thinking outside the box
- The New Normal
- Lessons Learned
  - Not everyone was ready
  - Barriers to access
  - Support to participate
Reopening & Forging Ahead

- Collaborative approach with Families
- Collaborative approach with Providers
- Collaborative approach with DDS staff
- Phased Reopening Plan
- Lessons Learned
  - Involvement of Residential Providers
  - Case Management
  - Respecting people’s views and fears

KEEP CALM AND FORGE AHEAD
Supporting Individuals with Intellectual and Developmental Disabilities during the COVID-19 Pandemic in Oregon

State of Oregon Department of Human Services Office of Developmental Disabilities Services

September 2020
Oregon’s initial response to the COVID-19 public health emergency centered on a “Stay Home, Save Lives” campaign.

- Oregonians were asked to stay home and only go out for essential business such as groceries or emergency medical care.
- Schools and most businesses closed.
- Providers were expected to conduct essential business and IADLs such as grocery shopping for individuals with intellectual and developmental disabilities whenever possible and appropriate.
- Physical contact between individuals and persons not living in the same home (other than caretakers) became completely limited.
Oregon is utilizing an intensive multi-disciplinary emergency response

Oregon’s Office of Developmental Disabilities Services is a part of the team which includes partners such as:

Other HCBS and State Administered Programs- Aging and Persons with Disabilities, Mental Health, Protective Services, Child Welfare, Oregon Health Authority, and Public Health Agencies

The statewide team collaborates with state leadership to establish mandates and guidelines for following Governor directives. Efforts also include:

- Assistance to community partners in implementing precautionary and infection control measures
- Focused efforts on coordinating access to PPE
- Monitoring outbreak trends
Centralized Communication

ODDS developed a dedicated webpage for COVID-19 related communication and resources. Anyone can subscribe to the page to receive all updates to the page.

Information is organized by audience, including:

- Individuals and Families
- Case Managers
- Providers
In addition to the ODDS COVID-19 Webpage, ODDS communication efforts include:

- Virtual stakeholder meetings
- Case management webinars
- Provider webinars
- Podcasts
- Directors’ messages
- Policy transmittals
- Guides
- PowToon videos
- Social Media platforms such as Facebook
Outreach to Individuals and Families

ODDS offers many types of information for individuals and families, including PowToon videos, infographics, partner videos, and fact sheets on our webpage: https://www.oregon.gov/DHS/SENIORS-DISABILITIES/DD/Pages/ODDS-COVID-19-Information.aspx

- General COVID Information
- How to be Social While Physically Distancing
- Wearing a mask
- Testing Guidance
- Medical Rights
- Contact Tracing
- Reopening
- Working during COVID-19
ODDS COVID-19 Video

- https://youtu.be/MJ8eeC-tVD4
How to support individuals to have Home and Community-Based living experiences during a pandemic “stay home” order

ODDS focused on options to allow individuals to be connected to services and significant people in their lives through remote technology.

Efforts included making remote technology accessible and available for individuals supported in our service system, such as:

- Access to devices with video feed capabilities so individuals could be in touch with their case managers, providers, advocates, and friends and family.
  (utilizing K-Plan state plan assistive device and assistive technology coverage and Oregon state general funds)

- Individuals and families were connected to internet services.
  (internet providers offering free services, community partner subsidies, K-plan state plan assistive technology coverage and Oregon state general funds)
HCBS Protections During COVID-19 Pandemic

**Offer choice where possible.** Although choices may be limited, it is important to have individuals self-direct choices as much as possible, including choice in activities in the home, times of activities, and food preferences.

**Enhanced protections related to exits.** Providers of residential services may only issue a notice of involuntary exit when there is a health or safety issue to such a degree that community-based living options are insufficient to meet needs.

**Encourage connection with friends and family using technology.**

**The community living expectations apply to everyone and individuals are supported to make informed choices about risk and accessing the community.**
Individual Medical Rights

Oregon Legislature collaborated with ODDS and partner organizations to pass SB 1606 in a special session, which:

- Prohibits a hospital or health care provider from conditioning or communicating that treatment is dependent upon an individual having a POLST, advanced directive, or other similarly related structure in place.
- Gives individuals the right to have a support person present with them in the hospital.

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**70th OREGON LEGISLATIVE ASSEMBLY—2020 Special Session**

**A-Engrossed**

**Senate Bill 1606**

Ordered by the Senate June 26
Including Senate Amendments dated June 26

Sponsored by Senators COURTNEY, GEILER (at the request of Joint Committee on the First Special Session of 2020)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor’s brief statement of the essential features of the measure.

Prohibits hospital from conditioning admission or treatment, or suggesting that treatment is conditioned, on patient having POLST or executing advance directive or other instruction regarding administration, withholding or withdrawing of life-sustaining procedures or artificially administered nutrition and hydration.

Requires hospital to permit presence of support person for person with disability in emergency department and during hospital stay under specified conditions. Allows hospital to impose conditions to ensure safety of patient, support person and staff.
Funding for Caregivers in Hospital Settings:

ODDS is utilizing the provision of the CARES Act which allows for personal care in acute care settings. To continue this service option, Oregon will be seeking an amendment to the K-plan state plan.

Funding for support persons must be driven by a specific individual need and choice. The care provided must not be duplicative or considered a responsibility of the hospital. Indicators of a need for support include:

- Communication support needs
- Challenging behavior that interferes with receiving medical care
- Care needs are so unique that a familiar caregiver is necessary
Monitoring and Service Authorization During Pandemic

Monitoring of service delivery and individual welfare is conducted through remote technology wherever possible.

When there is a concern of safety, health, or welfare of an individual, responders (including case managers, protective services, or licensors) take precautionary measures to respond in person.

Using technology to limit activities that would require in-person contact, such as electronic signatures to approve plans or having person-centered planning meetings occur through video conferencing.

Oregon is utilizing opportunities of allowable flexibilities for service delivery, including case management services.
Safety and Advocacy

ODDS has focused on ensuring that providers and partners are aware that Mandatory Abuse Reporting responsibilities continue to apply during the pandemic.

Outreach to individuals and families to inform them of advocacy resources and rights.

Collaboration with community partners including the Residential Facilities Ombudsman, Disability Rights of Oregon, and Oregon Council on Developmental Disabilities.
ODDS sought and received approval to provide contingency funds to service providers impacted by closures.

Suspension of operations threatens the financial ability of providers to stay in business and operate critical community and integration services following reopening of the state.

With the implementation of the “Stay Home, Stay Safe” orders, many facility and community-based day support activities and employment services were suspended.
Creative Resources and Provider Support

ODDS developed a staffing support line

Providers report available, qualified direct support staff whose work site or duties have been closed or suspended due to the pandemic

Providers of services impacted by a shortage of available workers or an increased need for staffing contact ODDS Staffing Support to access an available workforce
Creative Provider Approaches

Providers whose operations may be physically shuttered have been flexible and are offering alternative solutions to support individuals to be engaged.

- **Creating computer based or remote activity options**
- **Facilitating social connections with peer groups through remote technology**
- **Offering support in alternate locations such as outdoor spaces where physical distancing can be maintained.**
Re-Opening

ODDS is constantly adapting to changes and progress in re-opening of Oregon.

Re-opening is by county at the direction of Oregon’s governor.

ODDS has created comprehensive guides for all service types, settings, and roles to set expectations for each phase of re-opening.

Re-opening allows for improvements in community-living opportunities, but there are still important precautions and limits due to individuals with I/DD considered a high-risk population.

Re-opening of group services can only occur when a county reaches Phase 2 and providers are required to submit a comprehensive re-opening plan that is reviewed by ODDS.

There is great variation in county classification with some counties being downgraded as a result of increase in infection rates.
Barriers and Concerns

The future is uncertain

Change in weather resulted in more limited options

Isolation will become normative

Budget cuts

Poor job market
In this together

Oregon has had a generally positive response from providers and the community regarding policy and expectations around the COVID pandemic.

“Living rich, full lives. Making personal choices. Meaningful employment in integrated community jobs. Support to families. Those are among the key goals of Oregon’s system for people with intellectual and developmental disabilities.”
Resources and Questions

Questions?
• Contact Rose Herrera-
  Rose.K.Herrera@dhsoha.state.or.us

Additional Information
• Visit Oregon’s ODDS COVID-19 Website:
Resources

CMS Baltimore Office Contact—Division of Long-Term Services and Supports:

❖ HCBS@cms.hhs.gov

To request Technical Assistance:

❖ HCBSettingsTA@neweditions.net

❖ Information on Medicaid.gov regarding COVID-19:
Questions and Answers
Please complete a brief survey to help CMS monitor the quality and effectiveness of our presentations.

Please use the survey link:
https://www.surveymonkey.com/r/DLTSS-COVID-19

WE WELCOME YOUR FEEDBACK!