

APPENDIX K: Emergency Preparedness and Response and COVID-19 Addendum

Background:

This standalone appendix may be utilized by the state during emergency situations to request amendments to its approved waiver, to multiple approved waivers in the state, and/or to all approved waivers in the state. 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 applied retroactively as needed by the state. Public notice requirements normally applicable under 1915(c) do not apply to information contained in this Appendix.

Appendix K-1: General Information

General Information:

A. State: COLORADO

B. Waiver Title(s):

Elderly, Blind and Disabled (HCBS-EBD)
Community Mental Health Supports (HCBS-CMHS)
Supported Living Services (HCBS-SLS)
Brain Injury (HCBS-BI)
Spinal Cord Injury (HCBS-SCI)
Developmental Disabilities (HCBS-DD)
Children's Home and Community Based Services (CHCBS)
Children with Life Limiting Illness (HCBS-CLLI)
Children's Extensive Supports (HCBS-CES)
Children's Habilitation Residential Program (HCBS-CHRP)

C. Control Number(s):

HCBS-EBD: CO.0006.R08.15
HCBS-CMHS: CO.0268.R05.16
HCBS-BI: CO.0288.R05.15
HCBS-SCI: CO.0961.R02.04
HCBS-SLS: CO.0293.R05.11
CHCBS: CO.4157.R06.12
HCBS-CLLI: CO.0450.R03.03
HCBS-CES: CO.4180.R05.10
HCBS-DD: CO.0007.R08.10
HCBS-CHRP: CO.0305.R05.10

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.

COVID-19 pandemic. This amendment will apply waiver-wide for each waiver included in this Appendix, to all individuals impacted by the virus or the response to the virus (e.g. closure of day programs, etc.). The Appendix K is additive to the previously approved Appendix Ks. This Appendix K is increasing payment rates for select services. This amendment also includes the required guardrails that Medicaid providers will not exceed three 30-day episodes for retainer payments. The Department reserves the right to remove flexibilities that have been approved which are no longer deemed necessary.

- F. Proposed Effective Date: Start Date:** March 10, 2020 **Anticipated End Date:** 6 months after the conclusion of the public health emergency.

- G. Description of Transition Plan.**

All activities will take place in response to the impact of COVID-19 as efficiently and effectively as possible based upon the complexity of the change.

- H. Geographic Areas Affected:**

These actions will apply across the waiver to all individuals impacted by the COVID-19 virus

- I. Description of State Disaster Plan (if available)** *Reference to external documents is acceptable:*

N/A

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.

a. ___ Access and Eligibility:

i. ___ Temporarily increase the cost limits for entry into the waiver.

[Provide explanation of changes and specify the temporary cost limit.]

ii. ___ Temporarily modify additional targeting criteria.

[Explanation of changes]

b. X Services

i. X Temporarily modify service scope or coverage.

[Complete Section A- Services to be Added/Modified During an Emergency.]

ii. ___ Temporarily exceed service limitations (including limits on sets of services as described in Appendix C-4) or requirements for amount, duration, and prior authorization to address health and welfare issues presented by the emergency.

[Explanation of changes]

iii. ___ Temporarily add services to the waiver to address the emergency situation (for example, emergency counseling; heightened case management to address emergency needs; emergency medical supplies and equipment; individually directed goods and services; ancillary services to establish temporary residences for dislocated waiver enrollees; necessary technology; emergency evacuation transportation outside of the scope of non-emergency transportation or transportation already provided through the waiver).

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

iv. ___ Temporarily expand setting(s) where services may be provided (e.g. hotels, shelters, schools, churches). Note for respite services only, the state should indicate any facility-based settings and indicate whether room and board is included:

[Explanation of modification, and advisement if room and board is included in the respite rate]:

v. ___ Temporarily provide services in out of state settings (if not already permitted in the state’s approved waiver). [Explanation of changes]

c. ___ Temporarily permit payment for services rendered by family caregivers or legally responsible individuals if not already permitted under the waiver. Indicate the services to which this will apply and the safeguards to ensure that individuals receive necessary services as authorized in the plan of care, and the procedures that are used to ensure that payments are made for services rendered.

d. ___ Temporarily modify provider qualifications (for example, expand provider pool, temporarily modify or suspend licensure and certification requirements).

i. ___ Temporarily modify provider qualifications.

[Provide explanation of changes, list each service affected, list the provider type, and the changes in provider qualifications.]

ii. ___ Temporarily modify provider types.

[Provide explanation of changes, list each service affected, and the changes in the provider type for each service].

iii. ___ Temporarily modify licensure or other requirements for settings where waiver services are furnished.

[Provide explanation of changes, description of facilities to be utilized and list each service provided in each facility utilized.]

e. ___ Temporarily modify processes for level of care evaluations or re-evaluations (within regulatory requirements). [Describe]

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 Department is requesting the ability to increase, supplement, or provide additional fee-for service payment(s) to all HCBS providers, depending on need, to ensure continuity of operations and assurance of client health, safety, and welfare within waiver benefits. The following rate increases replace previously approved increases. These rate increases are all from the base rate and do not build on each other.

Beginning July 18, 2020 through December 31, 2020, the Department has increased the rate up to 27.4% for the following services:

- Adult Day Services (SCI, EBD, CMHS, BI)
- Specialized Adult Day Services (EBD, CMHS, SCI)
- Adult Day Service Transportation (SCI), (EBD), (CMHS), (BI)
- Day Habilitation (SLS), (DD)
- Non-Medical Transportation (SCI), (EBD), (CMHS), (BI), (SLS), (DD)
- Supported Employment (SLS), (DD)

January 1, 2021 through March 31, 2021, the Department has increased the rate up to 37.4% for the for the following services:

- Adult Day Services (SCI), (EBD), (CMHS), (BI)
- Specialized Adult Day Services (EBD, CMHS, SCI)
- Adult Day Service Transportation (SCI), (EBD), (CMHS), (BI)
- Day Habilitation (SLS), (DD)
- Non-Medical Transportation (SCI), (EBD), (CMHS), (BI), (SLS), (DD)
- Supported Employment (SLS), (DD)

January 1, 2021 through March 31, 2021, the Department has increased the rate up to 8% for the following residential services:

- Alternative Care Facility (EBD), (CMHS)
- Group Residential Services and Supports (DD)
- Supported Living Programs (BI)

April 1, 2021 through June 30, 2021, the Department has increased the rate up to 27.4% for the following services:

- Adult Day Services (SCI, EBD, CMHS, BI)
- Specialized Adult Day Services (EBD, CMHS, SCI)
- Adult Day Service Transportation (SCI), (EBD), (CMHS), (BI)
- Day Habilitation (SLS), (DD)
- Non-Medical Transportation (SCI), (EBD), (CMHS), (BI), (SLS), (DD)
- Supported Employment (SLS), (DD)

Depending on the need, the rates may need to exceed the currently approved rate methodology as delineated in this amendment. The Department has attached the current rate sheet.

The Department has modified billing processes for only the subcomponent of Supported Community Connector service within Day Habilitation. The Department included a tiered approach for this service to allow for flexible billing. The Supported Community Connector within Day Habilitation will be able to be billed in 15-min unit increments with different rates based on the service provided and the member's individual level. This approach enables providers to administer services based on the needs of the individual.

There are (3) tiers that are allowed: Tier 1 is for virtual only services. The rates for Tier 1 include the following:

Tier 1 - 15 min unit-

Level 1 - \$1.95

Level 2 - \$2.13

Level 3 - \$2.35

Level 4 - \$2.69

Level 5 - \$3.28

Level 6 - \$4.50

Level 7 - \$8.04

Tier 2 is for traditional Supported Community Connector. The rates for Tier 2 are the base rates for this service and include the following:

Tier 2 - 15 min unit

Level 1 - \$2.57

Level 2 - \$2.83

Level 3 - \$3.15

Level 4 - \$3.71

Level 5 - \$4.59

Level 6 - \$6.59

Level 7 - \$10.38

Tier 3 is for Supported Community Connector provided in a 1 on 1 setting. Tier 3 is for members who are not able to, or choose not to, be served in a group or virtually. The rates for Tier 3 will be no more than 40% above the rates for Tier 2 (Base Rate) as this is in a one on one setting. (DD and SLS).

g. ___ 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.]

h. ___ Temporarily modify incident reporting requirements, medication management or other participant safeguards to ensure individual health and welfare, and to account for emergency circumstances. [Explanation of changes]

i. ___ Temporarily allow for payment for services for the purpose of supporting waiver participants in an acute care hospital or short-term institutional stay when necessary supports (including communication and intensive personal care) are not available in that setting, or when the individual requires those services for communication and behavioral stabilization, and such services are not covered in such settings.

[Specify the services.]

--

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 payments for services that include Personal Care including Adult Day Centers, Habilitation Services (Specialized Habilitation, Supported Community Connections, Pre-Vocational Services, Supported Employment Services, and Community Connector), and Personal Care Services shall be provided in response to the impact of the COVID-19 pandemic.

In addition, retainer payments for services that include personal care can be provided when residential provider closures are necessary due to COVID-19 containment efforts or the individual is sick and cannot attend/receive the service due to medical recommendation, seclusion/quarantine/stay-at-home order, government recommendation that close contact of individuals in the service creates a public risk.

The following residential services will receive retainer payments:

- Alternative Care Facility (EBD, CMHS)
- Supported Living Program (BI)
- Transitional Living Program (BI)
- Residential Habilitation (CHRP, DD)

Medicaid providers shall not exceed the total amount that the provider would have received had services been provided as expected. The retainer time limit may not exceed three (3) episodes of up to 30 days per beneficiary.

- Retainer payments may only be billed when authorized and documented by case managers via log note in the member's file within the case management system, the Benefits Utilization System (BUS).
- Retainer payments are received by billing for units authorized in a member's service plan, but not provided due to the COVID-19 pandemic.
- Units billed shall not exceed the amount, scope, and duration otherwise authorized for the Service provider.
- Retainer payments may not be billed when the member chooses to receive the service from a different service provider or alternative services in lieu of services identified above.
- The provider is prohibited from duplicative billing or billing in excess of what is permitted for the service rendered per the signed Provider Agreement.
- The signed Provider Agreement states that a "provider shall accept full legal responsibility for all claims submitted under the Provider's Colorado Medical Assistance Program ID number to the Colorado Medical Assistance Program relating to the delivery of benefits to eligible individuals and to the submission of claims for such benefits including the retainer payment guardrails described in the June 30, 2020 CMS FAQs."
- Providers must demonstrate that they were in compliance with the guardrails described in the June 30, 2020 CMS FAQs; or, if not compliant with one or more elements of the guidance, providers must demonstrate that they did not profit financially from receiving retainer payments.

k. ___ Temporarily institute or expand opportunities for self-direction.

[Provide an overview and any expansion of self-direction opportunities including a list of services that may be self-directed and an overview of participant safeguards.]

l. ___ Increase Factor C.

[Explain the reason for the increase and list the current approved Factor C as well as the proposed revised Factor C]

m. ___ 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]

Appendix K Addendum: COVID-19 Pandemic Response

1. HCBS Regulations

- a. ☐ Not comply with the HCBS settings requirement at 42 CFR 441.301(c)(4)(vi)(D) that individuals are able to have visitors of their choosing at any time, for settings added after March 17, 2014, to minimize the spread of infection during the COVID-19 pandemic.

2. Services

- a. ☒ Add an electronic method of service delivery (e.g., telephonic) allowing services to continue to be provided remotely in the home setting for:
- i. ☐ Case management
 - ii. ☐ Personal care services that only require verbal cueing
 - iii. ☐ In-home habilitation
 - iv. ☐ Monthly monitoring (i.e., in order to meet the reasonable indication of need for services requirement in 1915(c) waivers).
 - v. ☒ Other *[Describe]*:

The Department has added an additional level for Supported Community Connector, Tier 1 that enables providers to administer services to clients via virtual means (DD and SLS).

- b. ☐ Add home-delivered meals
- c. ☐ Add medical supplies, equipment and appliances (over and above that which is in the state plan)
- d. ☐ Add Assistive Technology

3. Conflict of Interest: The state is responding to the COVID-19 pandemic personnel crisis by authorizing case management entities to provide direct services. Therefore, the case management entity qualifies under 42 CFR 441.301(c)(1)(vi) as the only willing and qualified entity.

- a. ☒ Current safeguards authorized in the approved waiver will apply to these entities.
- b. ☐ Additional safeguards listed below will apply to these entities.

4. Provider Qualifications

- a. ☐ Allow spouses and parents of minor children to provide personal care services
- b. ☒ Allow a family member to be paid to render services to an individual.
- c. ☐ Allow other practitioners in lieu of approved providers within the waiver. *[Indicate the providers and their qualifications]*

- d. ☐ Modify service providers for home-delivered meals to allow for additional providers, including non-traditional providers.

5. Processes

- a. ☐ Allow an extension for reassessments and reevaluations for up to one year past the due date.
- b. ☐ Allow the option to conduct evaluations, assessments, and person-centered service planning meetings virtually/remotely in lieu of face-to-face meetings.
- c. ☐ Adjust prior approval/authorization elements approved in waiver.
- d. ☐ Adjust assessment requirements
- e. ☐ Add an electronic method of signing off on required documents such as the person-centered service plan.

Contact Person(s)

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

First Name: Colin
Last Name Laughlin
Title: Deputy Director of the Office of Community Living
Agency: Department of Health Care Policy and Financing
Address 1: 1570 Grant Street
Address 2:
City Denver
State Colorado
Zip Code 80203
Telephone: 303-866-2549
E-mail Colin.Laughlin@state.co.us
Fax Number 303-866-4411

8. Authorizing Signature

Signature:

Date: 3-18-2021

Colin Laughlin

State Medicaid Director or Designee

First Name: Tracy
Last Name Johnson
Title: Medicaid Director
Agency: Colorado Department of Health Care Policy and Financing
Address 1: 1570 Grant Street
Address 2: Click or tap here to enter text.
City Denver
State CO
Zip Code 80203
Telephone: 303-866-2993
E-mail Tracy.Johnson@state.co.us
Fax Number 303-866-2828

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 that the state is temporarily modifying, enter the entire service definition and highlight the change. State laws, regulations and policies referenced in the specification should be readily available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

Service Specification					
Service Title:	Day Habilitation				
Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:					
Service Definition (Scope):					
<p>Day Habilitation includes assistance with acquisition, retention or improvement in self-help, socialization and adaptive skills that takes place in a non-residential setting, separate from the participant's private residence or other residential living arrangement, except for the occasion of extreme medical and/or safety needs. Activities and environments are designed to foster the acquisition of skills, appropriate behavior, greater independence, and personal choice. These services are individually coordinated through the participant's Service Plan. Day Habilitation Services and Supports encompass two types of habilitative environments: Specialized Habilitation (SH) and Supported Community Connections (SCC). Day Habilitation Services does not include sheltered workshops.</p> <p>Supported Community Connection (SCC) supports the abilities and skills necessary to enable the participant to access typical activities and functions of community life such as those chosen by the general population, including community education or training, retirement and volunteer activities. Supported Community Connection provides a wide variety of opportunities to facilitate and build relationships and natural supports in the community, while utilizing the community as a learning environment to provide services and supports as identified in a participant's Service Plan. These activities are conducted in a variety of settings in which participants interact with non-disabled individuals (other than those individuals who are providing services to the participant). These types of services may include socialization, adaptive skills, personnel to accompany and support the individual in community settings, resources necessary for participation in activities and supplies related to skill acquisition, retention or improvement. Supported Community Connections may be provided in a group setting (or groups traveling together into the community) and/or may be provided on a one-to-one basis as a learning environment to provide instruction when identified in the Service Plan.</p> <p>During the Public Health Emergency, the Department has created three (3) tiers for Supported Community Connector to allow providers the ability to administer services based on the needs of the individual. The 3 tiers that are allowed include the following:</p> <p>Tier 1 is for virtual services only. Individuals who receive services under this tier will be notified and agree to remote services. In addition, the individual must be able to respond to verbal cueing and not require physical assistance when the service is rendered remotely.</p> <p>Tier 2 is for traditional supported community connector and there are no current changes to the current service.</p> <p>Tier 3 is for supported community connector that is provided in a 1 on 1 setting This tier is for members who are not able to be served in a group setting or by virtual means.</p>					
Specify applicable (if any) limits on the amount, frequency, or duration of this service:					
Provider Specifications					
Provider Category(s) (check one or both):	<input type="checkbox"/>	Individual. List types:	<input type="checkbox"/>	Agency. List the types of agencies:	
Specify whether the service may be provided by (check each that applies):		<input type="checkbox"/>	Legally Responsible Person	<input type="checkbox"/>	Relative/Legal Guardian

Provider Qualifications <i>(provide the following information for each type of provider):</i>				
Provider Type:	License <i>(specify)</i>	Certificate <i>(specify)</i>	Other Standard <i>(specify)</i>	
Verification of Provider Qualifications				
Provider Type:	Entity Responsible for Verification:		Frequency of Verification	
Service Delivery Method				
Service Delivery Method <i>(check each that applies):</i>	<input type="checkbox"/>	Participant-directed as specified in Appendix E	<input type="checkbox"/>	Provider managed
	<input type="checkbox"/>		<input type="checkbox"/>	
	<input type="checkbox"/>		<input type="checkbox"/>	



ⁱ Numerous changes that the state may want to make may 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; or (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.