

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: Kentucky

B. Waiver Title: Acquired Brain Injury/ Acquired Brain Injury Long Term Care/Supports for Community Living/Michelle P Waiver/Home and Community Based Waiver/Model II Waiver

C. Control Number: KY.0144.R07.02
KY.0314.R04.07
KY.0333.R04.06
KY.0475.R02.06
KY.0477.R02.06
KY.40146.R07.02

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

<input checked="" type="checkbox"/>	Pandemic or Epidemic
<input type="checkbox"/>	Natural Disaster
<input type="checkbox"/>	National Security Emergency
<input type="checkbox"/>	Environmental
<input type="checkbox"/>	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.

- 1) On March 6, 2020, Governor Andy Beshear declared a state of emergency in Kentucky related to COVID-19 (also known publicly as “coronavirus”). The virus spreads quickly and can cause mild to severe symptoms. The spread of the virus poses a threat to health and safety of our 1915(c) HCBS waiver participants and necessitates changes in service delivery methods and approaches.
- 2) As of February 18, 2021, Kentucky has had 1,254,101 confirmed cases, 1,634 currently hospitalized and 13,519 fatalities. The population served by the waivers includes individuals with acquired brain injuries, intellectual and developmental disabilities, the aged and physically disabled and individuals who are ventilator dependent. These populations are not only at a higher risk of contracting the virus, but are more likely to suffer complications up to, and including, death. At the same time, participants actively rely on waiver-funded support with activities of daily living, instrumental activities of daily living, supervision and oversight of care, and overall well-being. Many receive services in congregate settings, including adult day health cares. There are approximately 27,000 individuals currently enrolled in Kentucky’s 1915(c) HCBS waivers.
- 3) The Department for Medicaid Services is working with our sister agencies, the Department for Behavioral Health, Developmental and Intellectual Disabilities and the Department for Aging and Independent Living to provide direction and technical assistance to providers and participants. The Departments are following guidance provided by the Department of Public Health (DPH) and key federal agencies, including the Centers for Medicare and Medicaid and the Centers for Disease Control. Kentucky has created a website (kycovid19.ky.gov) that is being continually updated with information related to COVID-19. In addition, DPH is manning a 24-hour hotline for inquiries related to COVID-19 at 1-800-722-5725.
- 4) Kentucky seeks temporary changes to the HCBS waivers to continue to address staffing shortages, access to care issues and need for service provision beyond the terms of approved service descriptions to address participant health, safety and welfare for the duration of the emergency.
- 5) Kentucky is making the following additions to Appendix K effective January 1, 2022:
 - a. K-2-d. modifies provider type qualifications for the following services: Case Management, Respite, Personal Assistance, Attendant Care, and Residential Services
 - b. K-2-d.-iii increases the number of individuals allowed in ABI and ABI LTC residential settings and adds Technology Assisted Residential to ABI and ABI LTC.
 - c. K-2-f: temporarily increases payment rates for the following services: Attendant Care, Case Management (HCB and MPW only), Community Access, Community Guide, Community Living Supports, Community Transition, Companion, Home and Community Supports (HCB only), Homemaker, Non-Specialized Respite, Personal Assistance, Personal Care, Respite, Skilled Services by an LPN, Skilled Services by an RN, and Specialized Respite.

- d. K-2-j allows for potential retainer payments for personal care, residential habilitation, adult day health care, and adult day training providers.

F. Proposed Effective Date: Start Date: 3/06/2020 Anticipated End Date: six months after the end of the federal PHE

G. Description of Transition Plan.

Individuals will transition back to pre-emergency service status once federal and/or state health officials have determined that the virus outbreak is adequately contained and possesses minimal risks to revert to existing waiver practices. This transition will be implemented no sooner than 48 hours after the public has been made aware of pandemic containment and Medicaid providers have been notified of the intent to repeal emergency-based standards described herein. Providers will be given a period of 60 days to transition all participants' plans of care back to normal limits and operations within the approval time of the Appendix K

In keeping with existing practices, individualized needs will be re-assessed on a case-by-case basis, as indicated, if any long-term changes are required to an individual's person-centered service plan once the Commonwealth resumes standard program rules and policies approved in the active 1915(c) HCBS waiver applications.

H. Geographic Areas Affected:

Statewide

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

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. ___ Services

i. ___ 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.

[Redacted]

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

i. X Temporarily modify provider qualifications.

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

Case Management provider type qualifications will be modified to allow for Licensed Practical Nurses in all waivers and to modify the degree requirement from a Bachelor's degree to individuals who have an Associate's Degree or to allow for relevant experience to substitute for a degree in the provider qualifications. The age requirement for providers who provide respite, personal assistance, attendant care as well as residential staff will be decreased from twenty-one (21) to eighteen (18) when determined it is appropriate. This will allow for some of our health program vocational school students and college students to begin providing services and augment provider availability to provide additional services with the increase in staff.

ii. ___ Temporarily modify provider types.

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

[Redacted]

iii. X 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.]

The Department is increasing the number of participants permitted in a residential setting to up to five (5) in the ABI and ABI LTC waivers to ensure adequate capacity to serve individuals with emergency housing needs. The Department is also expanding Technology Assisted Residential service to the ABI and ABI LTC waiver, which will also allow up to five (5) participants in this setting. This modification must be executed by providers in accordance with all participant rights requirements for provider-controlled residential settings as indicated in the HCBS Settings Rule of 2014. Case Managers and Residential Providers are required to complete and submit critical incident reports to the Department for any health, safety or welfare concern including COVID or infectious disease exposure or diagnosis. The Department monitors all incident reports and responds as warranted based on the level of the concern. Provider's safety and infection control policies are routinely reviewed during certification, recertification review and as needed during any investigations.

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 COVID-19 public health emergency and the nature of its extended duration have significantly reduced the availability of direct-care workers across all HCBS programs. To address the known workforce shortage, the Department will temporarily increase the rates of the services listed below by 50% of the most recently approved 1915(c) waiver reimbursement rate to accommodate known overtime demands and estimated wage inflation during the public health emergency.

Provider agencies receiving this increase will be required to ensure via a documented attestation to DMS that 85% of the increased reimbursement amount will be passed on to direct service workers (the workforce responsible to directly provide care to participants as specified in the service definition) in the form of compensation increases, hiring and retention bonuses and other reimbursement-related incentives to recover and maintain a sufficient workforce.

The service providers for the following agency-managed services are eligible for the increase through the end of this Appendix K approval:

- Attendant Care
- Case Management – HCB and MPW only
- Community Access
- Community Guide
- Community Living Supports
- Community Transition
- Companion
- Home and Community Supports - HCB only
- Homemaker
- Non-Specialized Respite
- PDS Coordinator
- Personal Assistance
- Personal Care
- Respite
- Skilled Services by an LPN
- Skilled Services by an RN
- Specialized Respite

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.]

In response to the defined emergency, and in order to maintain a viable workforce, the state will make retainer payments to waiver providers of personal care and residential and day habilitation services, which include personal care. For calendar year 2021, The Department may provide up to three episodes of 30 consecutive days per beneficiary of retainer payments to both adult day health care and adult day training providers in addition to the initial retainer payments issued in 2020.

The state assures a retainer payment will not exceed the payment for the relevant service. The state will 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 duplicate uses of available funding streams, as identified in a state or federal audit or any other authorized third-party review. The state will require an attestation from the provider that it will not lay off staff and will maintain wages at existing levels. The state will require an attestation from the provider that they had not received funding from any other sources, including but not limited to, unemployment benefits and Small Business Administration loans, that would exceed their revenue for the last full quarter prior to the PHE, or that 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.

The Department will determine the rate and scope of retainer payments based on measurable declines in reimbursement as measured via a comparative claims analysis to compare a 90-day utilization period prior to the public health emergency to present utilization. Providers determined to have suffered or sustained a 50% or greater loss may be eligible for retainer payments. The amount of the payment will be based on census, claims data and eligibility based on the attestation mentioned above. Pursuant to Section 2: Medicaid Coverage of HCBS Retainer Payments during the COVID-19 PHE, State Medicaid Director Letter 21-003, retainer payments will not exceed three additional 30-day periods retroactive to 2021.

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]

Contact Person(s)

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

First Name: Pam
Last Name Smith
Title: Division Director
Agency: Department for Medicaid Services
Address 1: 275 E. Main St.
Address 2: Mail Stop 6W-B
City Frankfort
State Kentucky
Zip Code 40621
Telephone: 502-564-7540, ext. 2105
E-mail Pam.smith@ky.gov
Fax Number 502-564-0249

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

First Name: Click or tap here to enter text.
Last Name Click or tap here to enter text.
Title: Click or tap here to enter text.
Agency: Click or tap here to enter text.
Address 1: Click or tap here to enter text.
Address 2: Click or tap here to enter text.
City Click or tap here to enter text.
State Click or tap here to enter text.
Zip Code Click or tap here to enter text.
Telephone: Click or tap here to enter text.
E-mail Click or tap here to enter text.
Fax Number Click or tap here to enter text.

8. Authorizing Signature

Signature: /S/
State Medicaid Director or Designee

Date: 02/18/2022

First Name: Lisa
Last Name Lee
Title: Commissioner
Agency: Department for Medicaid Services
Address 1: 275 E. Main St.
Address 2: 6W-A
City Frankfort
State Kentucky
Zip Code 40621
Telephone: 502-564-4321
E-mail Lisa.Lee@ky.gov
Fax Number 502-564-0

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:				
<i>Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:</i>				
Service Definition (Scope):				
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 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 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



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.