

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: Minnesota

B. Waiver Title(s):

Brain Injury (BI) Waiver, Community Alternative Care (CAC) Waiver, Community Access for Disability Inclusion (CADI), Developmental Disabilities (DD) Waiver, and Elderly Waiver (EW)

C. Control Number(s):

0025.R08.15
4169.R05.18
0166.R07.04
4128.R07.13
0061.R07.17

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 county and tribal nation offices, etc.)

The purpose of this amendment is to consolidate policies from previous Appendix K submissions that were approved by CMS and to clarify that their effective period will end no later six months after the end of the federal public health emergency for COVID-19.

This change is additive to the Appendix K(s) already approved for the COVID-19 pandemic.

F. Proposed Effective Date: Start Date: March 13, 2020 **Anticipated End Date:** No later than six months after the end of the public health emergency for COVID-19.

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. ___ Services

i. X Temporarily modify service scope or coverage.

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

ii. X 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]

For parents of minors, family foster parents, spouses, and legal guardians who are providing home care nursing under an approved hardship waiver, the weekly 40-hour service limit and daily limit of 8 hours is removed.

For parents of minor children and spouses who provide personal assistance under consumer directed community supports (CDCS), the weekly 40-hour service limit is removed regardless of the number of parents, combination of parent(s) of minors and spouses, and number of children in the household who receive CDCS.

If applicable, overtime will be paid to these caregivers in accordance with the requirements of the Fair Labor Standards Act.

This provision is effective November 12, 2020.

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. X 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]:

Adult day services may be provided in-person to a participant in the participant's residence. Provision of adult day services must be in accordance with the service description set forth in Section A below.

This change is effective 4/29/20 and is additive to the Appendix K(s) already approved for the COVID-19 pandemic.

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

Initial assessments and annual re-assessments are not required to be conducted in a face-to-face setting. Assessments may be conducted via telephone or other remote methods. Telephonic or other remote methods will be conducted in accordance with HIPAA requirements, to the extent possible, but with recognition that the Office of Civil Rights is not enforcing certain requirements for good faith communications during the period of the national emergency. See <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

The above non-enforcement provision will expire prior to the end date of this Appendix K and Minnesota will resume its standard methods for complying with HIPAA upon expiration of the public health emergency.

Assessments and reassessments determine level of care and identify needs that are addressed in support planning.

f.____ 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.]

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. ___ 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.]

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. 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]

For purposes of forthcoming amendments and renewals of Minnesota’s HCBS waivers (BI, CAC, CADI, DD, and EW), the requirement for the Department to send a notice to county social services and advocacy organizations requesting that they post paper versions of the waiver amendments is waived. The Department will provide public notice and consult with tribal nations via electronic methods.

This change is additive to the Appendix K(s) already approved for the COVID-19 pandemic.

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]*:

During the effective period of this amendment, the following services may be provided via telephone or other remote methods:

- Adult Companion (all waivers)
- Adult Day Services (all waivers)
- CDCS—all services (all waivers)
- Day support services (BI, CAC, CADI, and DD)
- Day Training and Habilitation (DD)
- Employment development (BI, CAC, CADI, and DD)
- Employment exploration (BI, CAC, CADI, and DD)
- Employment support (BI, CAC, CADI, and DD)
- Family training and counseling (BI, CAC, CADI, and DD)
- Family caregiver coaching and counseling (EW)
- Family caregiver training and education (EW)
- Homemaker—home management and homemaker—personal care (all waivers)
- Independent living skills training (BI, CAC, and CADI)
- Individualized Community Living Supports (EW)
- Individualized home supports (BI, CAC, CADI, and DD)
- In-home family support (BI, CAC, CADI, and DD)
- Personal Support (BI, CAC, CADI, and DD)
- Positive supports (BI, CAC, CADI, and DD)
- Prevocational services (BI, CAC, CADI, and DD)
- Respite (all waivers)
- Specialist services (BI, CAC, CADI, and DD)
- Structured Day services (BI)
- Transitional Services (EW)

Telephonic or other remote methods of service delivery will be conducted in accordance with HIPAA requirements, but with recognition that the Office of Civil Rights is not enforcing certain requirements for good faith communications during the period of the national emergency. See <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>.

The above non-enforcement provision will expire prior to the end date of this Appendix K and Minnesota will resume its standard methods for complying with HIPAA upon expiration of the public health emergency.

- 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: Patrick
Last Name Hultman
Title: Deputy Medicaid Director
Agency: Minnesota Department of Human Services
Address 1: P.O. Box 64983
Address 2: 540 Cedar Street
City Saint Paul
State Minnesota
Zip Code 55164-0983
Telephone: 651-431-4311
E-mail patrick.hultman@state.mn.us
Fax Number 651-431-7421

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:

Date: February 4, 2021

/S/

State Medicaid Director or Designee

First Name: *Patrick*
Last Name *Hultman*
Title: Deputy Medicaid Director
Agency: Minnesota Department of Human Services
Address 1: 540 Cedar Street
Address 2: Click or tap here to enter text.
City St. Paul
State Minnesota
Zip Code 55164-0983
Telephone: 651-431-4311
E-mail patrick.hultman@state.mn.us
Fax Number Click or tap here to enter text.

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:	Case Management (all waivers)				
Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:					
Service Definition (Scope):					
<p>Services that assist participants in gaining access to needed waiver and state plan services, assist individuals with appeals under Minnesota Statutes, section 256.045, as well as needed medical, social, educational and other services, regardless of the funding source for the services.</p> <p>The case manager or case aide shall not have a personal financial interest in the services provided to the participant.</p> <p>Case managers shall refer the participant for a MnCHOICES reassessment and provide the necessary information to the certified assessor. Case managers are responsible for ongoing monitoring of the provision of services included in the participant's Coordinated Services and Supports plan. Case managers must have a minimum of two face to face contacts with the participant within the twelve month period. The participant's annual reevaluation may be counted as one face to face contact when case management activities are performed at the time of the visit. During the effective period of this amendment, case managers are not required to have a minimum number of face-to-face contacts with the participant in a twelve-month period. Case management activities may be conducted via telephone or other remote means. Telephonic or other remote methods will be conducted in accordance with HIPAA requirements, to the extent possible, but with recognition that the Office of Civil Rights is not enforcing certain requirements for good faith communications during the period of the national emergency. See https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html</p> <p>Case aides shall perform only administrative tasks delegated and supervised by the case manager that do not involve professional expertise or judgment (e.g., case filing, contacts to vendors to schedule services, phone contacts). Case aides shall not conduct participant assessments, reassessments, or community support plan development. Case aides must understand, respect and maintain confidentiality in regard to all details of their work.</p>					
Specify applicable (if any) limits on the amount, frequency, or duration of this service:					
Minnesota holds a section 1915(b) waiver that restricts the provision of case management services to employees and contractors of the lead agencies.					
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 (provide the following information for each type of provider):					

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
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Service Specification			
Service Title:	Adult Day Services (all waivers)		
<i>Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:</i>			
Service Definition (Scope):			
<p>The purpose of adult day service is to provide supervision, care assistance, training and activities based on the participant's needs and directed toward the achievement of specific outcomes as identified in the support plan.</p> <p>Services must be designed to meet both the health and social needs of the participants.</p> <p>In order to be covered as a waiver service, the adult day service must:</p> <p>A. Comply with all requirements for home and community-based settings set forth in 42 CFR 441.301(c);</p> <p>B. Offer a variety of meaningful and age-appropriate activities that are responsive to the goals, interests and needs of participants;</p> <p>C. Maximize opportunities for community inclusion by offering or providing activities designed to increase and enhance each participant's social and physical interaction with their community; and</p> <p>D. Afford flexible scheduling of adult day services to accommodate a participant's work schedule.</p> <p>Meals provided as part of this service shall be in accordance with 42 CFR 441.310(a)(2)(ii).</p> <p><u>During the effective period of this amendment, adult day services can be delivered in an alternative manner:</u></p> <ul style="list-style-type: none"> • <u>Remotely, via 2-way interactive video or audio communication</u> • <u>In-person, either in the person's residence, or in the licensed adult day setting, if delivered to a single person at a time.</u> <p><u>Services delivered in an alternative manner include all activities that are allowable under the existing adult day service, as well as medication set-up and caregiver support.</u></p> <p><u>Providers are limited to delivering no more than 4 hours/day of adult day services delivered in this alternative manner. Minimum service delivery requirements are waived when providers are delivering adult day services in this alternative manner.</u></p> <p><u>This change is effective 4/29/20 and is additive to the Appendix K(s) already approved for the COVID-19 pandemic.</u></p>			
Specify applicable (if any) limits on the amount, frequency, or duration of this service:			
Adult day services must be furnished two or more hours per day on a regularly scheduled basis, for one or more days per week.			
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 (provide the following information for each type of provider):			

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 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.