

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

Background:

This stand alone 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.¹ 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:** New Mexico
- B. **Waiver Title(s):** Supports Waiver, Developmental Disabilities Waiver
- C. **Control Number(s):** NM.1726.R00.01, NM.0173.R06.06

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.

COVID-19 pandemic. This amendment will apply to all individuals impacted by the virus or the response to the virus (e.g. closure of day programs, etc.). This Appendix K adds/changes the following sections to the newly added Supports waiver NM.1726: (b.iv.) expand setting to allow telehealth and remote based services; (d.i.) modify provider qualifications to suspend fingerprint checks or modify training requirements; (e) modify processes for level of care evaluations or re-evaluations; (h) temporarily modify incident report requirements for deviations in staffing; (i) temporarily allow for payment of services for the purpose of supporting waiver participants in an acute care hospital or short-term institutional stay when necessary supports 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; (m.) flexibility of timeframes for the CMS 372, evidentiary package(s), and performance measure data collection; Addendum (2.) to add an electronic method of service delivery allowing services to continue to be provided remotely in the home setting; and, Addendum (5.) to allow an option to conduct evaluations, assessments, and person-centered service planning meetings virtually in lieu of face-to-face meetings and adjust assessment requirements.

In addition, this Appendix K clarifies the effective dates in section (f.) to temporarily increase payment rates with effective dates 3/16/2020 – 9/30/2020 for supported living, intensive medical living, and family living as approved in NM.0173.R06.03.

F. Proposed Effective Date: Start Date: January 27, 2020 **Anticipated End Date:** January 26, 2021

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. 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:

NM.1726.R00.01: Effective July 1, 2020 – January 26, 2021

Telehealth options will be delivered in accordance with HIPAA including the good faith provisions of telehealth under HIPAA during the COVID-19 public health emergency. To support participants' engagement with their community in a manner that is in line with recent public health orders, allow for up to 100% remote based services as needed for group day services. Providers must create and provide a schedule that includes curriculum, dates, start times and end times and can only be billed from the start time of the class/session to the end time of the class/session.

Community Supports Coordinator

- To address the COVID-19 public health emergency, the State will suspend face-to-face requirements detailed for this service for the duration of the emergency. Face to face visits will instead be provided telephonically. This includes all meetings, assessment, monitoring, and follow up activities.

Employment Supports

- Employment Supports can be provided in the home and by an electronic mode of service delivery as approved in the Individual Service Plan (ISP) in accordance with HIPAA requirements.

Customized Community Supports -Group:

- Customized Community Supports can be provided in the home and by an electronic mode of service delivery as approved in the ISP in accordance with HIPAA requirements.

Customized Community Supports - Individual:

- Customized Community Supports can be provided in the home and by an electronic mode of service delivery as approved in the ISP in accordance with HIPAA requirements.

Behavior Support Consultation (BSC):

- Face-to-face visits may be provided by telehealth option or phone visits in accordance with HIPAA requirements. This includes assessment, monitoring or follow up. All interactions will be documented as required according to policy.
- BSC is intended to improve the ability of the unpaid caregiver and Direct Supports Professional to carry out therapeutic interventions. Trainings and demonstrations of competency may be done by telehealth or telephone as needed in accordance with HIPAA requirements.

Personal Care Services

- PCS that require only verbal cueing may be provided by an electronic mode of service delivery option as approved in the ISP in accordance with HIPAA requirements.

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. 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.]

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Temporarily allow provider enrollment or re-enrollment with modified risk screening elements such as suspending fingerprint checks or modifying training requirements for direct support personnel:

- Fingerprinting for direct service providers will be suspended for the duration of the emergency. New Mexico providers must continue to conduct employee abuse registry screenings and document that screening has occurred. Direct service providers who could not complete a fingerprint appointment are required to submit their fingerprint cards within 30 days of the termination of the declaration of the emergency. If fingerprint cards are not completed within this timeframe, the direct service provider will no longer be able to provide service.

- First Aid training for direct support personnel may be completed online.

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]

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Initial level of care assessments will continue to be completed as required and may be performed using telephonic or, if the capacity exists for the participant or provider, virtual visits for assessments, in accordance with HIPAA requirements.

When the initial ICF/IID Level of Care is evaluated, it is not required that a physician recommend that the individual should receive the level of care furnished through the waiver. A history and physical form is also not required from the physician. Initial level of care evaluations will consist of confirmation of intellectual disability or developmental disability from the Department of Health substantiating that the individual meets the State’s definition of developmental disability and completion of the Long Term Care form by the Community Support Coordinator. The LOC is evaluated and determined by the Medicaid Agency.

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.]

For the following services, rate increases based on the State's 2019 rate study will be effective to alleviate overtime and PPE costs as a result of COVID-19. Rates will be increased to enable the provider to maintain the direct support professional (DSP) workforce due to increased risk to the DSPs and nurses who are required to support COVID-19 positive members, to cover DSPs and nurses who must work higher than normal overtime that is not already factored into the provider rate, and to cover additional expenditures for cleaning and PPE. Rate increases will be temporary during the pandemic.

NM.0173.R06.06: Effective: 3/16/2020 – 9/30/2020 (Approved in NM.0173.R06.03)

- Supported Living – category 1: \$210.35 (8% rate increase); category 2: \$258.69 (11% rate increase); category 3: \$339.09 (16% rate increase); category 4: \$435.81 (11% rate increase)
- Intensive Medical Living Services - \$468.00 (9% rate increase)
- Family Living - \$140.99 (18 % rate increase); Jackson class only \$152.77 (18% rate increase)

g. X Temporarily modify person-centered service plan development process and individual(s) responsible for person-centered service plan development, including qualifications.

[Describe any modifications including qualifications of individuals responsible for service plan development, and address Participant Safeguards. Also include strategies to ensure that services are received as authorized.]

NM.1726.R00.01: For the Supports Waiver, the Person-Centered Service Plan is called the Individual Service Plan (ISP). The state will allow the Community Supports Coordinator (CSC) (i.e. case manager) to facilitate person centered planning electronically using a video visit whenever possible and otherwise occurring telephonically. The state will allow electronic signatures or electronic verification via secure email consent in accordance with the state's HIPAA requirements for any ISP related documents that currently require a physical signature. The state will ensure current service plans meet the individual's needs through the required CSC monthly contact that can be conducted telephonically. The state will lift the quarterly home visit requirement and require a video visit when possible or other telephonic monitoring activity with the participant or representative. During the monthly contacts, the CSC will review all services the participant has budgeted and is accessing, any barriers to access, and the need to increase or decrease services. The state will ensure the person-centered service plan is modified to allow for additional supports and/or services to respond to the COVID-19 pandemic. The specificity of such services, including amount, duration and scope will be appended as soon as possible, but no later than 30 days, to ensure that the specific service is delineated accordingly to the date it began to be received.

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. X 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.]

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The State will allow for payment for PCS services for the purpose of supporting waiver participants in an acute care hospital stay when necessary supports are not available in that setting during this emergency. Provision of service must meet the following criteria:

“(A) identified in an individual’s person-centered service plan (or comparable plan of care);

“(B) provided to meet needs of the individual that are not met through the provision of hospital services;

“(C) not a substitute for services that the hospital is obligated to provide through its conditions of participation or under Federal or State law, or under another applicable requirement; and

“(D) designed to ensure smooth transitions between acute care settings and home and community-based settings, and to preserve the individual’s functional abilities.”

The payments may only be made for up to 30 consecutive days.

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]

NM.1726.R00.01: Effective July 1, 2020 – January 26, 2021

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

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
 - i Personal care services that only require verbal cueing
 - i In-home habilitation
 - ix Monthly monitoring (i.e., in order to meet the reasonable indication of need for services requirement in 1915(c) waivers).
 - v Other *[Describe]*:

- 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: Sharilyn
Last Name Roanhorse-Aguilar
Title: Bureau Chief, Exempt Services and Programs
Agency: Medical Assistance Division
Address 1: 1 Plaza La Prensa
Address 2: Click or tap here to enter text.
City Santa Fe
State New Mexico
Zip Code 87507
Telephone: 505-827-1307
E-mail Sharilyn.Roanhorse@state.nm.us
Fax Number 505-827-3185

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

First Name: Jason
Last Name Cornwell
Title: Acting Deputy Secretary
Agency: Department of Health
Address 1: 5301 San Mateo, NE, Suite 1100
Address 2: Click or tap here to enter text.
City Albuquerque
State New Mexico
Zip Code 87108
Telephone: 505-660-3456

E-mail Jason.Cornwell@state.nm.us
Fax Number 505-222-6690

8. Authorizing Signature

Signature:

Date: 09/24/2020

/s/


State Medicaid Director or Designee

First Name: Nicole
Last Name Comeaux
Title: Director, Medical Assistance Division
Agency: Human Services Department
Address 1: 1 Plaza La Prensa
Address 2:
City Santa Fe
State New Mexico
Zip Code 87507
Telephone: 505-490-7703
E-mail Nicole.Comeax@state.nm.us
Fax Number 505-827-3185

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:			
<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 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.