

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.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):** Developmental Disabilities Waiver, Mi Via ICF/IDD Waiver, Medically Fragile Waiver
- C. **Control Number(s):** NM.0173.R06.02, NM.0448.R02.02, NM.0223.R05.02

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.

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.)

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.]

NA

ii. ___ Temporarily modify additional targeting criteria.

[Explanation of changes]

NA

b. X Services

i. ___ 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]

NM.0173.R06.02:**Service Limitations in Appendix C-1/C-3****Assistive Technology:**

- To ensure health and safety and to support access to telehealth, participants who do not currently have access to a computer, tablet or other device in the home are able to utilize AT funds in excess of \$250.00 in order to purchase the needed device that allows remote video conferencing, training and monitoring by clinicians. The maximum funding allowed under AT is \$250.00 per ISP year. With the Appendix K amendment to the service, the maximum allowed for AT during the emergency will be \$500.00.

Supported Living:

- Supported Living is intended for individuals who are assessed to need residential habilitation to ensure health and safety. Supported Living services are designed to address assessed needs and identified individual outcomes. NM will temporarily allow the service to exceed the prescribed limit of two (2) to four (4) individuals in a provider operated and controlled community residence. Supported Living providers are responsible for providing an appropriate level of services and supports twenty-four (24) hours per day, seven (7) days per week.

Additional Limits on Amount of Waiver Services C-4

- To address health and welfare issues of participants presented by the emergency, temporarily suspend requirements for prior authorization for waiver services which are related to or resulting from this emergency.

NM.0448.R02.02:**Additional Limits on Amount of Waiver Services C-4**

- To address health and welfare issues of participants presented by the emergency, temporarily suspend requirements for prior authorization for waiver services which are related to or resulting from this emergency.

NM.0223.R05.02:**Additional Limits on Amount of Waiver Services C-4**

- To address health and welfare issues of participants presented by the emergency, temporarily suspend requirements for prior authorization for waiver services which are related to or resulting from this emergency.

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]:

NM.0173.R06.02:**Service Locations in Appendix C-1/C-3**

Temporarily allow the following expanded service settings in accordance with HIPAA requirements:

Occupational Therapy for Adults:

- Face-to-face visits may be provided by telehealth option or phone visits. This includes assessment, monitoring or follow up. All interactions will be documented.
- Trainings and return demonstrations may be done by telehealth or phone as needed.

Physical Therapy for Adults:

- Face-to-face visits may be provided by telehealth option or phone visits. This includes assessment, monitoring or follow up. All interactions will be documented.
- Trainings and return demonstrations may be done by telehealth or phone as needed.

Speech and Language Therapy for Adults:

- Face-to-face visits may be provided by telehealth option or phone visits. This includes assessment, monitoring or follow up. All interactions will be documented.
- Trainings and return demonstrations may be done by telehealth or phone as needed.

Community Customized Supports:

- Community Customized Supports can be provided in the home.

Behavior Support Consultation:

- Face-to-face visits may be provided by telehealth option or phone visits. This includes assessment, monitoring or follow up. All interactions will be documented.
- Trainings and return demonstrations may be done by telehealth or phone as needed.

NM.0448.R02.02:**Service Locations in Appendix C-1/C-3****Customized Community Group Supports:**

- Customized Community Group Supports can be provided in the home.

Community Direct Support:

- Community Direct Support can be provided in the home.

NM.0223.R05.02:**Service Locations in Appendix C-1/C-3**

Case Management:

- Face-to-face visits may be provided by phone visits.

Private Duty Nursing:

- Face-to-face visits may be provided by telehealth option or phone visits. This includes assessment, monitoring or follow up. All interactions will be documented.
- Trainings and return demonstrations may be done by telehealth or phone as needed.

Behavioral Support Consultation:

- Face-to-face visits may be provided by telehealth option or phone visits. This includes assessment, monitoring or follow up. All interactions will be documented.
- Trainings and return demonstrations may be done by telehealth or phone as needed.

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

c. X 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.

NM.0223.R05.02:

Service Qualifications in Appendix C-1/C-3

Home Health Aide:

- To ensure health and safety needs of participants are being met, if an agency is unable to support the usual budgeted hours with substitute staff, the agency may hire a relative, friend, or parent at the home health aide rate.

NM.0173.R06.02, NM.0448.R02.02, NM.0223.R05.02:

Living Supports, Customized In Home Supports, and/or Customized Community Supports services may be rendered by relatives or legally responsible individuals when they have been hired by the provider agency authorized on the ISP. Relatives, Guardians, and/or legally responsible individuals must receive training on the participant's ISP for whom they are rendering these services. Training on the ISP must consist of basic health and safety support needs for that participant including but not limited to Health Care Plans, Medical Emergency Response Plans, Comprehensive Aspiration Risk Management Plan, Behavior Support Plans and Therapy Plans.

When one of these services is rendered by relatives, guardians, and/or legally responsible individuals, the provider agency authorized to render the Living Supports and/or Customized Community service is responsible for ensuring that services are provided as authorized in the ISP and that billing occurs in accordance with DDSD requirements.

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.]

NM.0173.R06.02, NM.0448.R02.02, NM.0223.R05.02:

Temporarily allow provider enrollment or re-enrollment with modified risk screening elements such as suspending fingerprint checks, or modifying training requirements to all service providers. New Mexico providers must conduct employee abuse registry screenings and document that screening has occurred.

All Direct Support Face to Face Required Level One Training will be suspended for the duration of the emergency except for Abuse Neglect Exploitation, Individual Specific Training of the person ISP, and related Health Care Plans, Medical Emergency Response Plans, Comprehensive Aspiration Risk Management Plans, Behavioral Support and Therapy Plans. These required trainings can be performed via telephonic/telehealth/online modalities by Provider Agency Staff as opposed to Face to Face Training by the Therapists.

NM.0173.R06.02:

Provider Qualifications in Appendix C-1/C-3

To increase the pool of available direct service providers who can render services during the emergency, an exception to the Provider Enrollment Unit process to other services will be implemented to allow currently approved providers to provide services in other service types in the event of staffing shortages. Staff qualified under any service definition in the DDW may be used for provision of any non-professional service under another service definition in C1/C3.

NM.0448.R02.02:

Home Health Aide:

- The requirement for supervision by a registered nurse has been extended to ninety (90) days.
- The State will allow for remote supervision by a registered nurse as needed.

NM.0223.R05.02:

Provider Qualifications in Appendix C-1/C-3

Agency requirements for use of licensed and non-licensed staff from outside sources will follow the state's guidance during the emergency with agencies continuing to screen and qualify staff in the best interest of the participant. Trainings may be abbreviated, but specific trainings for the care of the individual will remain a requirement.

Service Specific

Home Health Aide:

- The requirement for supervision by a registered nurse has been extended to ninety (90) days.
- The State will allow for remote supervision by a registered nurse as needed.

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]

NM.0173.R06.02, NM.0448.R02.02, NM.0223.R05.02:

The New Mexico Human Services Department is allowing the use of currently approved LOC assessments on file to fulfill the annual LOC requirement for impacted waiver participants for the duration of the emergency.

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 and the TPA or provider, virtual visits for assessments, in accordance with HIPAA requirements.

When the initial ICF/IDD 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 case manager/consultant.

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. 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.0173.R06.02, NM.0448.R02.02, NM.0223.R05.02:
Person-Centered Service Plans that are due to expire within the next 60 days require case management contact to the participant using allowable remote contact methods to verify with the participant or representative that the current assessment and services, including providers, remain acceptable and approvable for the upcoming year. The state will verify by obtaining electronic signatures/or electronic verification via secure email consent from service providers and the individual or representative, in accordance with the state’s HIPAA requirements. The state will ensure current service plans meet the individual’s needs through the required case management/consultant monthly contact that can be conducted telephonically with the participant or representative. During the monthly contacts, the case manager/consultant reviews all services the participant has budgeted and is accessing, any barriers to access, and the need to increase or decrease services. During the emergency, the case managers/consultant will use the information gathered at the monthly contact to determine if the current person-centered service is meeting the participant’s needs. 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. X 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]

The requirement to conduct a neglect investigation of any incident of deviation in staffing as outlined in an individual plan may be suspended.

The requirement to submit an incident report for Abuse Neglect and Exploitation for any deviation in staffing as outlined in an individual plan may be suspended. If this requirement is suspended, providers must report any incidents in which staffing shortages result in a failure to provide care via General Events Reporting.

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.]

NM.0173.R06.02, NM.0448.R02.02, NM.0223.R05.02:

The State will 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 are not available in that setting during this emergency. The payments may only be made for up to 30 consecutive days.

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.]

The State will temporarily include retainer payments for approved personal care services on a participant's budget when day habilitation and community integrated employment closures are necessary due to COVID-19 containment efforts. The personal assistance retainer time limit may not exceed the lesser of 30 consecutive days or the number of days for which the State authorizes a payment for "bed-hold" in nursing facilities. Retainer payments will not be authorized when a provider is providing services and will only occur on a case by case basis when a provider is directly impacted by the emergency.

Additionally, retainer payments may be made:

NM. 0173.R06.02:

Retainer payments will be made available for the following personal care service: Customized Community Supports (Individual and Group Day Habilitation) and Community Integrated Employment during the time of the emergency.

NM.0448.R02.02:

Retainer payments will be made available for the following personal care services: Homemaker, Customized Community Group Supports (Day Habilitation) and Community Integrated Employment during the time of the emergency.

NM.0223.R05.02:

Retainer payments will be made available for the following personal care service: Home Health Aide during the time of the emergency.

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]*:

- 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, Except 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: Director, Developmental Disabilities Supports Division
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: March 27, 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: 505-827-7704
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.