

# 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.<sup>1</sup> This appendix may be completed retroactively as needed by the state.

## Appendix K-1: General Information

### General Information:

- A. State: New York
  
- B. Waiver Title: 

Office for People with Developmental Disabilities (OPWDD) Comprehensive Home and Community Based Services (HCBS) Waiver
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- C. Control Number: 

NY 0238.R06.04
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- 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.

New York seeks to amend the original Appendix K to the OPWDD Comprehensive 1915(c) HCBS Waiver serving people with intellectual and/or developmental disabilities (I/DD) HCBS waiver .238 (R06.01) approved on April 7, 2020. The following changes remain in effect:

- a) Allow day services to be delivered in alternative sites;
- b) Allow the services in alternative sites to be authorized prior to updating the participant's Life Plan;
- c) Allow Residential Habilitation services to be provided in alternate sites, including a non-certified location or certified by the State as an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID);
- d) Allow Residential Habilitation services to be delivered temporarily out-of-state;
- e) Allow certain habilitation services to be delivered via telehealth in accordance with HIPAA requirements;
- f) Allow a temporary modification of staff training and qualifications if new staff are needed to provide essential services;
- g) Temporarily extend the timeframes for completion of Level of Care (LOC) assessments and Plan of Care review when the Care Manager cannot safely contact the participant;
- h) Allow modifications to person-centered service planning;
- i) Allow options for retainer day payments for Community Habilitation, Day Habilitation and Prevocational Service providers;
- j) Increase Residential Habilitation services reimbursement to address increase in day-time staffing needs;
- k) Increase fees for Respite and Community Habilitation services to address additional equipment and staff training needs;
- l) Modify incident reporting requirements;
- m) Waive HCBS Setting requirements during the state of emergency;
- n) Postpone OPWDD Division of Quality Improvement (DQI) reviews;
- o) Allow extension of time frames for cost reporting submissions for both State and not-for-profit providers.

The August 18, 2020 amendment included only additional changes requested by New York from CMS. All approved Appendix K authority is assumed to continue if not modified in this amendment. Additional changes, which are highlighted in this document, include:

- This amendment extends the Appendix K authority for the full year permissible under this emergency authority (March 7, 2020 to March 6, 2021).
- Allows Respite to be added to the list of services with remote delivery
- Sunsets retainer payments for Day Habilitation, Prevocational Services and Community Habilitation provider agencies and rate increases on 7/21/2020.
- The changes to the service plan, including the amount, duration and scope of the service plan will be updated in the Life Plan as soon as possible but not later than 60 days after the approval of the service or change (changed from initiation of the service or change).
- Amends language to comply with the new COVID-19 Retainer payment guidance.
- Timeframes for the submission of the CMS 372s will be extended
- References to remote delivery of services are included in the Respite service definition

This amendment includes only additional changes requested by New York from CMS. All approved Appendix K authority is assumed to continue if not modified in this amendment.

Additional changes, which are highlighted in this document, include:

- Effective 10/15/2020, modification to the program day duration required for billing Day Habilitation and Site-Based Prevocational Services for program closures in areas of the State with mandated closures due to high rates of COVID-19 and in other areas of the State where the local public health agency directs a program closure due to increased rates of COVID-19 cases among individuals and/or staff at the program site. This flexibility is also being made available in situations where a provider is not required to close its Day Habilitation and/or Site- Based Prevocational Services by either NYS or the local public health agency but closes pre-emptively due to elevated percentages of individuals and staff at a particular site that have either tested positive for COVID-19 or are required to quarantine because of close contact with a person who tests positive for COVID-19.
- Extension of the anticipated end date from 3/7/2021 until 3/31/2021. The state is evaluating if an additional Appendix K application will be needed based upon further evaluation of recent Federal guidance regarding the extension of the Appendix K authority beyond the end of the Public Health Emergency (PHE).

F. Proposed Effective Date: Start Date: 3/7/20 Anticipated End Date: 3/31/21

## 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.*

- 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].

The State is amending Residential Habilitation rates for Supervised residences to compensate providers for additional hours of staffing needed when day services are suspended, or the resident is unable to attend for health and safety reasons. The current rate methodology will be adjusted upward to reflect the enhanced staffing needs in the residence for increased day time staffing hours. Supervised Residential Habilitation providers will not be eligible for this enhanced rate if the provider is also billing a retainer day for the person's day services, or Respite services (see K-2 (b)(i)).

Respite and Community Habilitation providers may receive an increased fee adjustment for the delivery of services throughout the duration of the emergency to allow additional funding for Personal Protective Equipment (PPE) for staff and increased Direct Support Professional training costs regarding COVID-19 procedures. Fee increases will not exceed more than 25% of the standard fee.

These provisions will sunset on 7/21/20.

Following the end of retainer payments, although rates will not change, the day habilitation and site-based prevocational services program day duration required for billing will be at least half of the currently required service duration. Prior to this modification, Day Habilitation and Site Based Prevocational Services were reimbursed in full units requiring four hours of service and half units requiring two hours of service. This modification will reduce the threshold of face-to-face service time required to bill either a full unit (now two hours minimum) or half unit of service (now one hour minimum). The purpose of the modification is to ensure that fixed costs are covered by the reduced service utilization expected during the Pandemic and with the expectation that providers will continue to work in partnership with OPWDD to make more available non-center-based and telemodalities in an effort to increase community involvement of waiver enrollees and to protect the delivery of services during future emergencies.

Effective October 15, 2020, the above modification to the program day duration required for billing Day Habilitation and Site-Based Prevocational Services will be authorized when one of the following is true:

- The provider operates Day Habilitation and/or Site-Based Prevocational Services in a geographic area that meets NYS DOH thresholds for program closure due to increased rates of COVID-19 cases or the local public health agency has required a program to close. This designation requires that center-based day services are closed and that community-based services operate at a reduced capacity. This allowance for the use of the modified billing rules will end with the de-designation of the area.
- The provider is not required to close its Day Habilitation and/or Site- Based Prevocational Services by either NYS or the local public health agency. However, the provider closes the program as a preemptive measure due to the elevated percentage of individuals and staff at a particular site that have either tested positive for COVID-19 or are required to quarantine because of close contact with a person who tests positive for COVID-19. These modifications for the program day durations associated with non-mandatory closures may be in effect for a period of up to 14 days for risk mitigation. Longer duration of flexibilities (beyond 14 days) would occur only where there is a subsequent designation of the region as being subject to closure or another period of quarantine is determined to be necessary. The agency must report the closure to OPWDD and demonstrate the need for the closure based on Incident Reporting Management Application (IRMA) reporting of positive COVID-19 cases among individuals and staff at the affected sites

## Contact Person(s)

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

**First Name:** Janet  
**Last Name** Zachary-Elkind  
**Title:** Deputy Director  
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**B. If applicable, the State operating agency representative with whom CMS should communicate regarding the waiver is:**

**First Name:** Katherine  
**Last Name** Marlay  
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## 8. Authorizing Signature

**Signature:**

\_\_\_\_\_  
/S/  
State Medicaid Director or Designee

**Date:**

1/20/21

**First Name:** Donna  
**Last Name:** Frescatore  
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<sup>i</sup> 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.