

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 York

B. Waiver Title(s):

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

NY 0238.R06.12

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 day programs, etc.)

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 0238 (R06.01) approved on April 7, 2020 with subsequent revisions. All approved changes in prior CMS Appendix K approvals remain in effect due to the continuing nationwide Public Health Emergency determination made by the Secretary of the Department of Health and Human Services.

In response to COVID-related revenue losses for OPWDD HCBS Waiver providers, this amendment will delay certain rate setting provisions for Day Habilitation and Site-Based Prevocational Services approved under NY.0238.R06.06 until the end of OPWDD's Appendix K authority.

Additionally, this submission establishes a workforce special occasion one-time supplemental payment/bonus program for certain HCBS staff who were not included in the earlier incentive program established under Appendix K 0238.R06.08.

F. Proposed Effective Date: Start Date: 03/07/20 Anticipated End Date: Six months following the end date 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. ___ 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.

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. 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.]

Rate Setting Provisions

In response to the COVID-related revenue losses, NYS will delay certain rate setting provisions for the period of time in which the Appendix K is in effect for Day Habilitation and Site-Based Prevocational Services. The following provision described in Appendix I-2-a of the base waiver NY.0238.R06.06 is delayed until six months following the end of the Public Health Emergency for voluntary (non-State Government) provider agencies:

1. Provider To/From Transportation reimbursement will not be updated utilizing the most current and available Consolidated Fiscal Report (CFR), as described in NYS Waiver – NY.0238.R06.06. The To/From Transportation amount per unit will remain at the level calculated for the rates in effect as of June 30, 2022, as adjusted by any subsequent state authorized changes.

Updating To/From Transportation in accordance with the approved methodology in NYS.0238.R06.06 would reduce the To/From Transportation component of the rates by 32.5% for Day Habilitation and 26.1% for Site-Based Prevocational Services agencies. Freezing these components of the Day Habilitation and Site-Based Prevocational Services rates will allow agencies to maintain their current rates. This Appendix K freezes To/From Transportation to the per unit amount in effect on June 30, 2022, as adjusted by any subsequent state authorized changes, and only applies to Fee-for-Service providers.

Supplemental Payments for Workforce Stabilization

This amendment to the Appendix K will offer a one-time supplemental payment to not-for-profit Agencies to make available a special occasion bonus for Title Code 100 (Non-Administrative Support) and Title Code 300 (Clinical) positions as highlighted below. This one-time payment and modification to the Waiver will be funded with resources pursuant to Section 9817 of the ARP. The Supplemental Payment for Workforce Stabilization is available for the following Waiver services: Day Habilitation, Prevocational Services, Residential Habilitation, Respite, Supported Employment, Community Habilitation, Pathway to Employment, Intensive Behavioral Services and Fiscal Intermediary (for staff serving individuals in the self-direction program).

The full value of the provider's supplemental payment will be paid to qualified workers performing functions attributable to Title Code 100 and Title Code 300 positions in the non-for-profit sector; however, the per employee amount of the special occasion bonus will be dependent upon each Agency's distribution plan. The \$7,500 per full-time equivalent payment to provider Agencies is approximately 15% of the statewide average salary for Non-Administrative Support and Clinical staff employed by not-for-profit agencies delivering HCBS Waiver services in NYS.

1. **Agency qualification:** Agencies qualify for the supplemental payments described above if the provider agency was active in the delivery of an HCBS Waiver service supported and/or delivered by Non-Administrative Support and Clinical staff during the period from March 2020 to September 2021. Activity is demonstrated by the eMedNY claiming of at least one OPWDD HCBS Waiver

service. A provider that only submitted HCBS Waiver claims for Retainer Payments is not eligible for the supplemental payment. Agencies must also have reported full-time equivalent positions in Title Code 100 and/or Title Code 300 in the Consolidated Fiscal Report (CFR) on file as of December 31, 2022, for the period of July 1, 2018 – June 30, 2019 or January 1, 2019 – December 31, 2019.

2. **Calculation of Payment to the Agency:** To bolster a more sustainable HCBS workforce, this supplemental payment will be calculated based on the number of Title Code 100 (Non-Administrative Support) and Title Code 300 (Clinical) full-time equivalent (FTE) positions reported by a qualifying Agency in the CFR on file as of December 31, 2022, for the period of July 1, 2018 – June 30, 2019 or January 1, 2019 – December 31, 2019. This total number of FTE positions will be multiplied by \$7,500 and further adjusted for salary-sensitive fringe benefit costs to determine the value of the supplemental payment each qualified Agency will receive.
3. **Worker qualification:** The special occasion one-time supplemental bonus payment is available to qualified workers who are employed by a qualified Agency and whose function is reported as Title Code 100 (Non-Administrative Support) or Title Code 300 (Clinical) as defined in the New York State CFR Manual. The employee must be on the provider Agency's payroll as of the date that the lump sum payment is received by the qualified Agency.

Providers eligible to receive the supplemental payment retain 100% of the total computable expenditure claimed by the Medicaid agency to CMS. The provider subsequently must make all funds available directly to qualified Non-Administrative Support and Clinical staff, net of any salary-sensitive fringe benefits costs attributable to these supplemental payments, within 30 days of receipt of the funds.

The flow of funds for these supplemental payments will differ from other HCBS Waiver services, which are adjudicated through eMedNY as service payments tied to individual service recipients. These supplemental rate payments will be made as lump-sum payments using eMedNY. The issuance of supplemental payments will be based on CFR data. The provider agency's Executive Director and Board Chair must sign an attestation confirming that these supplemental payments, net of any salary-sensitive fringe benefits, will be made available and paid to eligible staff. OPWDD will then calculate the total supplemental payment due the provider agency and establish the appropriate, provider specific payments in eMedNY. Supplemental payments will be based on the proportion of providers enrollees in fee-for-service versus the proportion of the provider enrollment. The value of the supplemental payment will then be reported to CMS on the CMS-64. Supplemental payments will be subject to audit and review to ensure program compliance.

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. 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: Phil
Last Name Alotta
Title: Associate Health Planner, Office of Health Insurance Programs
Agency: NYS Department of Health
Address 1: 99 Washington Avenue
Address 2: One Commerce Plaza, Suite 1208
City Albany
State New York
Zip Code 12210
Telephone: (518) 486-7654
E-mail Phil.alotta@health.ny.gov
Fax Number (518) 473-1764

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

First Name: Katherine
Last Name Marlay
Title: Deputy Commissioner
Agency: NYS OPWDD
Address 1: 44 Holland Avenue
Address 2: Click or tap here to enter text.
City Albany
State NY
Zip Code 12229
Telephone: 518-486-6466
E-mail Katherine.marlay@opwdd.ny.gov
Fax Number N/A

8. Authorizing Signature

Signature: /S/

Date: 1/23/2023


State Medicaid Director or Designee

First Name: Amir
Last Name Bassiri
Title: Medicaid Director
Agency: NYS Department of Health
Address 1: 99 Washington Ave
Address 2: Click or tap here to enter text.
City Albany
State New York
Zip Code 12210
Telephone: Click or tap here to enter text.
E-mail amir.bassiri@health.ny.gov
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:				
<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) (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 (specify)	Certificate (specify)	Other Standard (specify)	
Verification of Provider Qualifications				
Provider Type:	Entity Responsible for Verification:		Frequency of Verification	
Service Delivery Method				
Service Delivery Method (check each that applies):	<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.