

# 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.<sup>1</sup> 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): Children's Waiver

C. Control Number(s): NY.4125.R05.07

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 State (NYS). each emergency checked if those emergencies affect different geographic areas and require different changes to the waiver.

A new coronavirus: 2019 Novel Coronavirus, is spreading worldwide, causing the disease called COVID-19. Due to both travel-related cases and community contact transmission of COVID-19 in New York State, on March 7, 2020, Governor Andrew Cuomo declared a state of emergency to begin the processes and plans for quickly and effectively containing the spread of the virus. On March 11, 2020, the World Health Organization declared the COVID-19 as a pandemic. The declared state of emergency has sequestered waiver participants and waiver service providers to their homes with limited community access. Participants enrolled in the Children's Waiver (6,600 individuals) are impacted. The emergency has impacted services on a statewide basis. This amendment applies statewide for the Children's Waiver.

**F. Proposed Effective Date: Start Date:** March 1, 2020 **Anticipated End Date:** February 28, 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. Activities may include but are not limited to:

- a) allowing services to be provided through alternative means (telehealth/telephonic modalities in accordance with HIPAA),
- b) modification of HCBS/LOC reassessments,
- c) modification of service limits,
- d) utilization of electronic signatures and reliance on verbal agreement while awaiting physical/electronic signatures,
- e) modification to incident reporting protocols,
- f) allow for retainer payments for Community and Day Habilitation providers,
- g) modify monthly services delivery requirements if providers are unable to contact or properly connect with the participant based upon alternative methods of service delivery (e.g., not face to face or telehealth in accordance with HIPAA), this can occur for a maximum two consecutive months
- h) modification of timeframes for regular scheduled review and renewal of the Plan of Care,
- i) delay CMS' Evidence Request response report to no later than 6 months following the end of the emergency; and
- j) delay CMS' 372 reporting requirements to no later than 6 months following the end of the emergency

**H. Geographic Areas Affected:**

These actions will apply statewide across to all waiver participants and their families impacted by the COVID-19

**I. Description of State Disaster Plan (if available) Reference to external documents is acceptable:**

The New York State Department of Health (NYSDOH) is a member of the New York State Disaster Preparedness Commission, composed of the commissioners, directors/chairpersons of the 32 State agencies and one volunteer organization – the American Red Cross. The responsibilities of the Disaster Preparedness Commission include: the preparation of State disaster plans; the direction of State disaster operations and coordination with local government operations; and the coordination of federal, State and private recovery efforts. Information on the State Disaster Plan can be found at the following website: <http://www.dhSES.ny.gov/planning/cemp/>.

## 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. 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]

During COVID19 State of Emergency, the Children's Waiver will allow individuals to exceed service limits if sufficiently justified with approval from NYSDOH or its designee to ensure the health and welfare of our waiver participants.

The Children's Waiver includes the following services which may exceed the limits on amount, frequency, or duration:

- Community Habilitation
- Day Habilitation
- Prevocational Services
- Respite
- Supported Employment
- Adaptive and Assistive Equipment
- Caregiver/Family Supports and Services
- Community Self-Advocacy Training
- Non-Medical Transportation
- Palliative care - Expressive Therapy
- Palliative care – Bereavement Service
- Palliative care – Massage Therapy
- Palliative care – Pain and Symptom Management

Respite may not be billed simultaneously in both an institutional and HCBS settings to prevent duplicate billing.

**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]:

With appropriate justification, waiver providers may provide HCBS to enrolled waiver participants who may be displaced and living in a shelter and hotel due to the COVID-19 emergency. In a situation where relocation is necessary for health and safety, the HCBS staff will continue to provide services to the person in the same scope, frequency and duration as described in the person's plan of care in the best interest of the individual. In addition, respite services may continue to be provided to an individual or group for services not requiring hands on assistance through telehealth methods in compliance with HIPAA when clinically justified and when meeting the Plan of Care identified needs and desired outcomes (e.g., when the delivery of services can be effectuated via verbal prompting/cueing). Additionally, respite can be provided telephonically only when meeting all of the above and when the provider/family does not have the appropriate technological equipment to provide the service through telehealth.

Through billing procedures and post payment reviews, NYSDOH will ensure that there will be no duplicative payments.

**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]**

The Children’s Waiver HCBS/LOC assessment may be conducted by telephone or permitted telehealth modalities in compliance with HIPAA (as modified during the public health emergency).

Children and youth referred for HCBS eligibility who are released from an institutional setting or referred by a Licensed Professional of the Healing Arts (LPHA), the additional documentation of the LPHA risk factor is not needed because the release from the higher LOC or the referral from the LPHA are sufficient documentation of risk.

The annual HCBS/LOC eligibility determination re-assessment requirement is suspended. When annual re-assessments are delayed, care management must continue to monitor the participant’s needs and their Plan of Care services to ensure appropriate continuation in the HCBS Children’s Waiver and should document all updates and reviews in the participant’s case record/file. Reevaluations will be extended up to one year past the due date of the re-evaluation.

**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.]

Consistent with our discussions with CMS as part of our 1135 waiver process, a temporary waiver of face-to-face requirements for Health Home providers has been instituted by NYSDOH and will be part of NYSDOH's disaster state plan amendment. In lieu of face-to-face contact, Health Home Care Managers may utilize telephonic or telehealth capabilities in accordance with HIPAA requirements (as modified by OCR during the public health emergency).

Health Home and C-YES care managers should continue to make timely and appropriate contact with the HCBS participants, family, and involved providers to ensure the Plan of Care documentation is up-to-date and current. When postponing face-to-face visits or conducting these visits via telehealth/telephone, Care Managers should carefully coordinate next steps with the person and other providers. The state will ensure that delays in face-to-face visits will not result in delays to annual person-centered service plan re-certifications. If the person has immediate Care Management needs, for example, the person requires assistance with pharmacy or accessing food and other basic needs, delivery of school supplies and schoolwork connectivity, the Care Manager should ensure a frequency of contact sufficient to keep the person healthy and safe.

Telephonic and telehealth modalities in accordance with HIPAA requirements (as modified by OCR during the public health emergency) can be utilized to support Plan of Care planning and development. All Plans of Care and related program documents currently requiring original signatures may be executed using electronic signature consent in order to support timely implementation of services. Verbal consent from the participant is only used to initiate services while awaiting the signed document dated the day of the meeting during the State of Emergency. An original signature dated the day of the meeting can be secured by mail or other means. Each HCBS participant must have a Plan of Care on file with an HCB Service or Health Home care manager HCBS

Team meetings may be provided via telephonic/telehealth modalities in compliance with HIPAA (as modified by OCR during the public health emergency).

Consistent with the Plan of Care planning modifications described in this Appendix K, the care manager will update the person-centered service plan with information received from the participant and others absent the formal administration of an assessment tool.

**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]**

Health Home and HCBS Providers must continue to report and investigate incidents in accordance with existing requirements. Any on-site investigations of minor notable occurrences may be delayed, if the health of the investigator might be at risk and a delay in the investigation would not create a concern about the health and safety of individuals served. The report may not be delayed past 90 days after the end of the emergency period.

**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. 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 confirms that retainer payments are for direct care providers who normally provide services that include habilitation that contains components of personal care and personal care, but are currently unable to due to complications experienced during the COVID-19 pandemic because the waiver participant is sick due to COVID-19; or the waiver participant is sequestered and/or quarantined based on local, state, federal and/or medical requirements/orders. The state will implement a distinguishable process to monitor payments to avoid duplication of billing.

The retainer time limit may not exceed the lesser of 30 consecutive days or the state’s nursing facility bed hold limit.

The Children’s Waiver currently intends to implement retainer payments as follows: Retainer payments will be authorized for designated Community Habilitation and Day Habilitation providers that have been billing Community and or Day Habilitation services at any time since April 1, 2019, the inception of the Children’s Waiver. These providers will be able to request approval to bill the Retainer Payment.

- Providers will be determined by NYSDOH to be qualified to bill for Retainer Payment by submitting an attestation in template form. Providers will need to verify that Retainer Payment will only be billed for those participants in which Community and or Day Habilitation has been outlined as a service within the Health Home or CYES Plan of Care and who were actively being served by the provider. Assurance of no duplication of billing including residential services.
- Retainer payment will be billed by a newly issued locator code at the rate of 80% (eighty percent) of the regular Community and Day Habilitation rate that would have been billed if the participant, with the service on their Plan of Care, would have been served in accordance to the required service modality.
- Those participants that cannot be served through face-to-face or telehealth for these services, will be billed for at 80% of the regular rate, using the new locator code. Providers able to provide face-to-face or telehealth services will bill for the regular service delivery.
- Providers can only bill for the quantity indicated in the plan of care or authorized by the managed care organization (MCO).
- Retainer Payments may not be billed when the participant chooses to receive services through a different provider or disenrolls from the service.

NYSDOH will perform a lookback audit to ensure no duplicate billing was conducted, that Retainer Payments were only billed for participants that had the service on their Plan of Care, were enrolled or served by the provider prior to the retainer payment billing and at the frequency the service was indicated to be delivered, and to verify documentation that the service could not be provided as required or through telehealth/telephone.

**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]**

During COVID19 State of Emergency, there will be a delay of the CMS' Evidence Request response report and the CMS' 372 reporting requirements, these activities will be completed no later than 6 months following the end of the emergency.

Waive monthly services delivery requirements if providers are unable to contact or properly connect with the participant based upon alternative methods of service delivery (e.g., not face to face or telehealth in accordance with HIPAA, during the public health emergency). This monthly service requirement can only be waived for two consecutive months. During the period that monthly service delivery is waived, the individual will receive monthly monitoring (i.e., in order to meet the reasonable indication of need for services requirement in 1915(c) waivers).

## 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.  Service Coordination. The monthly face-to-face and the requirement for a quarterly in-home visit by Service Coordinators is suspended.
  - 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]*:

Initial eligibility assessments including HCBS/LOC, Team Meetings for service planning. Additionally, the requirement for face-to-face visits are suspended and can be provided through telehealth/telephonic

- 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, person-centered service planning meetings and Team 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:** Janet  
**Last Name:** Zachary-Elkind  
**Title:** Deputy Director  
**Agency:** New York State Department of Health, Office of Health Insurance Programs  
**Address 1:** 99 Washington Avenue  
**Address 2:** Suite 720  
**City:** Albany  
**State:** NY  
**Zip Code:** 12210  
**Telephone:** 518-473-0919  
**E-mail:** Janet.zachary-elkind@health.ny.gov  
**Fax Number:** 518-486-2495

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

**First Name:** April  
**Last Name:** Hamilton  
**Title:** Bureau Director  
**Agency:** New York State Department of Health, Office of Health Insurance Programs  
**Address 1:** 99 Washington Ave  
**Address 2:** Suite 720  
**City:** Albany  
**State:** New York  
**Zip Code:** 12237  
**Telephone:**  
**E-mail:** April.Hamilton@health.ny.gov  
**Fax Number:** 518-486-2495

## 8. Authorizing Signature

**Signature:**

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

**Date:**


**6/5/20**

**First Name:** Donna  
**Last Name:** Frescatore  
**Title:** State Medicaid Director  
**Agency:** New York State Department of Health  
**Address 1:** 99 Washington Avenue  
**Address 2:** 17<sup>th</sup> Floor  
**City:** Albany  
**State:** New York  
**Zip Code:** 12210  
**Telephone:** 518-474-3018  
**E-mail:** [Donna.frescatore@health.ny.gov](mailto:Donna.frescatore@health.ny.gov)  
**Fax Number:** 518-486-1346

## 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
<b>Provider Qualifications</b> <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>	
<b>Verification of Provider Qualifications</b>				
Provider Type:	Entity Responsible for Verification:		Frequency of Verification	
Service Delivery Method				
<b>Service Delivery Method</b> <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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<sup>i</sup> 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.