

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.ⁱ 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: Tennessee

B. Waiver Title(s):

Statewide Home and Community Based Services (or "Statewide") waiver
Comprehensive Aggregate Cap Home and Community Based Services (or
"CAC") Waiver
Tennessee Self-Determination Waiver Program

C. Control Number(s):

TN-0128.R06.04
TN-0357.R04.04
TN-0427.R03.06

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.

The purpose of this submission is to:

- 1) Increase rates for certain HCBS delivered through these waivers that have a direct care component. These wage increases were authorized in the FY 2021-22 Appropriations Act by the Tennessee General Assembly for the specific purpose of increasing wages to frontline direct support professionals (DSPs).
- 2) Increase the Individual Cost Limit in the Self-Determination Waiver (TN-0427.R03.06) as provided in Appendix K-2, Section a.i. in order to accommodate targeted rate increases authorized in the FY 2021-22 Appropriations Act by the Tennessee General Assembly for the specific purpose of increasing wages to frontline direct support professionals (DSPs) and ensure that individuals in the Self-Determination Waiver continue to have access to their currently approved HCBS, and are not adversely affected by these rate increases.
- 3) Provide an exception to the Individual Cost Limit in the Self-Determination Waiver (TN-0427.R03.06) and the Statewide Waiver (TN-0128.R06.04) (Appendix K-2, Section a.i), and authority to exceed certain benefit limits (Appendix K-2, Section b.ii) to allow a one-time increase of up to \$3,000 across such benefits to support family caregivers as provided in the State's conditionally approved Enhanced HCBS FMAP Spending Plan.

This submission applies to expenditures provided through the FFS system only. If/when concurrent 1115 authority is approved to deliver these services through managed care, the State will work through the appropriate authority to effectuate the continuation of these flexibilities under managed care, as appropriate.

This submission is additive to the previously approved Appendix K for these waivers.

F. Proposed Effective Date: Start Date: March 13, 2020 **Anticipated End Date:** no longer than 6 months following the expiration of the PHE

G. Description of Transition Plan.

Temporary flexibilities related to one-time additional benefits for family caregivers are provided pursuant to Section 9817 of the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117-2) and Tennessee's conditionally approved Initial HCBS Spending Plan. Within 90 days following the end of the federal emergency declaration, TennCare will file an amendment to each of these waivers to provide for the continuation of this assistance through March 31, 2024. Such amendments will reflect continuation of rate increases and revised Individual Cost Limits in the Self-Determination Waiver.

H. Geographic Areas Affected:

Each of these waivers and the populations they serve are statewide, as is the impact of the COVID-19 emergency.

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

The Tennessee Department of Health (TDH) activated its State Health Operations Center (SHOC) on January 16, 2020 to maximize capacity and available resources in preparation to respond to identified COVID-19 cases throughout the State. COVID-19 was designated as a “reportable disease” by TDH later that month, and a Task Force was formed under direction of Governor Bill Lee on March 4, 2020 to enhance Tennessee’s coordinated efforts to prevent, identify, and treat potential cases. A small contingent of the State Emergency Operations Center was activated on March 6, 2020 to respond to COVID-19 operations in the State, and to support TDH. Governor Bill Lee issued Executive Order 14 declaring a State of Emergency to facilitate COVID-19 response on March 12, 2020. The State of Tennessee Emergency Management Plan (TEMP) was activated and the State Emergency Operations Center (SEOC) is at a Level 3– State of Emergency. The Tennessee Emergency Management Agency (TEMA) supports local government needs; anticipates, responds to and remediates life threatening situations; supports the TDH; protects critical infrastructure; and ensures shared situational awareness and unified operations across Tennessee Government. On March 23, Governor Lee established the COVID-19 Unified Command, a joint effort to be led by Finance and Administration Commissioner Stuart McWhorter, to streamline coordination across the TEMA, TDH and Tennessee Department of Military during the COVID-19 emergency.

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. X Access and Eligibility:

- i. X Temporarily increase the cost limits for entry into the waiver.**
[Provide explanation of changes and specify the temporary cost limit.]

Effective July 1, 2021, the Individual Cost Limit in the Self-Determination Waiver (TN-0427.R03.06) is increased from \$30,000 to \$36,000 to accommodate targeted rate increases for HCBS delivered through this waiver that have a direct care component. These wage increases were authorized in the FY 2021-22 Appropriations Act by the Tennessee General Assembly for the specific purpose of increasing wages to frontline direct support professionals (DSPs). This Individual Cost Limit adjustment ensures that individuals in the Self-Determination Waiver continue to have access to their currently approved HCBS, and are not adversely affected by these rate increases.

During the period this Appendix K is effective, TennCare will monitor the impact of this Individual Cost Limit adjustment to ensure it is sufficient to permit continuation of services at the new reimbursement rates. Any additional adjustments needed to the Individual Cost Limit in the Self-Determination Waiver will be included as part of the 1915(c) waiver amendment submitted within 90 days after the federal declaration has concluded. A person enrolled in the Self-Determination Waiver shall not be disenrolled, nor shall currently authorized 1915(c) waiver HCBS provided under the Self-Determination Waiver be reduced, if the sole reason the person's Individual Cost Limit would be exceeded is the targeted rate increases in HCBS provided for purposes of increasing DSP wages.

If a Self-Determination Waiver participant's budget reaches \$36,000 and emergency assistance is needed, an exception to the cost limit of \$36,000 may be granted to provide up to an additional \$6,000 in covered waiver services to provide an extra measure of protection when the participant experiences a crisis or emergency situation that threatens his/her health and well-being. For purpose of this Amendment, when the total cost of services has exceeded \$36,000 due to increases in the rates of reimbursement for purposes of increasing DSP wages, continuation of currently authorized services shall qualify as "emergency assistance" and the additional \$6,000 may be used for continuation of such services.

Except as further described below, the total of all waiver services shall not exceed \$42,000 per year per participant, provided however, that a waiver participant shall not be required to experience a reduction in the amount of services currently being provided as a result of any increase in the rate of payment for such services, including rate increases targeted to increase wages for direct support professionals in order to help providers recruit and retain staff. If an increase in the rate of payment for service(s) would result in a person's cost limit being exceeded, the person shall not be required to reduce the amount of previously authorized services. All new or additional services will be subject to the \$36,000 cost limit (or \$42,000 cost limit when emergency services are authorized) as specified in this Appendix K, provided that an individual may exceed his or her individual cost limit in order to access Supported Employment – Individual Supports .

In addition to this adjustment in the Individual Cost Limit for the Self-Determination Waiver, and in addition to current exceptions to Individual Cost Limits provided in the currently approved waiver applications, effective November 2, 2021 through six months following the end of the federal PHE, Waiver participants in the Self-Determination and Statewide waivers will be eligible to exceed the individual cost limit specified in the approved waiver in order to be receive a one-time increase of up to \$3,000 across the following waiver services:

- Respite
- Specialized Medical Equipment, Supplies, and Assistive Technology
- Enabling Technology
- Environmental Accessibility Modifications

The \$3,000 is a one-time increase that may be utilized anytime between November 2, 2021 and six months following the end of the federal PHE, funded through Section 9817 of the ARP, as described in the State's conditionally approved Enhanced HCBS FMAP Spending Plan.

A participant may elect to receive additional units of one service or multiple services; however, the overall limitation on additional services is \$3,000 per person. This assistance is provided in addition to existing service limitations and without regard for individual cost limits specified in the approved waiver.

To qualify for this additional assistance a participant must be living with family members who routinely provide unpaid support and assistance; or if a participant does not live with family members, must have unpaid family caregivers who routinely provide unpaid support and assistance. The person may not be receiving residential supports.

The availability of these additional benefits is expected to support the person's independence, support family caregivers, address the additional stresses from impacts of COVID-19, and ensure the sustainability of these supports going forward.

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]

Effective November 2, 2021 through six months following the end of the federal PHE, Waiver participants will be eligible for a one-time increase of up to \$3,000 across the following waiver services:

- Respite
- Specialized Medical Equipment, Supplies, and Assistive Technology
- Enabling Technology
- Environmental Accessibility Modifications

The \$3,000 is a one-time increase that may be utilized anytime between November 2, 2021 and six months following the end of the federal PHE,

A participant may elect to receive additional units of one service or multiple services; however, the overall limitation on additional services is \$3,000 per person. This assistance is provided in addition to existing service limitations and without regard for individual cost limits specified in the approved waiver.

To qualify for this additional assistance a participant must be living with family members who routinely provide unpaid support and assistance; or if a participant does not live with family members, must have unpaid family caregivers who routinely provide unpaid support and assistance. The person may not be receiving residential supports.

The availability of these additional benefits is expected to support the person's independence, support family caregivers, address the additional stresses from impacts of COVID-19, and ensure the sustainability of these supports going forward.

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.]

Rates are increased **effective July 1, 2021** for certain HCBS delivered through these waivers that have a direct care component. These wage increases were authorized in the FY 2021-22 Appropriations Act by the Tennessee General Assembly for the specific purpose of increasing wages to frontline direct support professionals (DSPs). **Enhanced HCBS FMAP funds earned through Section 9817 are not used for rate increases in the 1915(c) waivers.**

The services impacted by these rate increases include:

- Family Model Residential Support
- Medical Residential Services
- Personal Assistance
- Residential Habilitation
- Semi-Independent Living
- Supported Living
- Supported Employment-Small Group Employment Support
- Community Participation Supports
- Intermittent Employment & Community Participation Wraparound
- Facility-Based Day Services
- Non-Residential-Homebound Support Service
- Supported Employment Individual Employment Support

This does not change the rate development method, but rather reflects increases in the DSP reimbursement rate accounted for in the current rate methodology.

For services that include a direct care component, the reimbursement rate takes into account an estimated calculation of the cost of wages paid to Direct Support Professionals (DSPs) employed by providers to deliver services requiring hands-on assistance and supervision including adjustments based on funding approved by the General Assembly to increase DSP wages. In the rules, this is referred to as the “Direct Support Professional (DSP) Reimbursement Rate.”

Except for Supported Employment – Individual Employment Support, rates for services that were adjusted were derived by increasing the DSP Reimbursement component of each of the identified rates from \$10/hour to \$12.50/hour. Rates for Supported Employment – Individual Employment Support were adjusted to account for an even average higher hourly wage—from \$12.75 to \$15.25. None of these changes yielded an increase of more than 50% in the reimbursement rate for any of the affected services.

This submission applies to expenditures provided through the FFS system only. If/when concurrent 1115 authority is approved to deliver these services through managed care, the State will work through the appropriate authority to effectuate the continuation of these increases under managed care.

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: Patti
Last Name Killingsworth
Title: Assistant Commissioner, Chief of LTSS
Agency: Division of TennCare
Address 1: 310 Great Circle Road
Address 2: Click or tap here to enter text.
City Nashville
State Tennessee
Zip Code 37243
Telephone: 615-507-6468
E-mail Patti.Killingsworth@tn.gov
Fax Number 615-741-1092

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

First Name: Brad
Last Name Turner
Title: Commissioner
Agency: Department of Intellectual and Developmental Disabilities
Address 1: UBS Tower, 8th Floor
Address 2: 315 Deaderick Street
City Nashville
State Tennessee
Zip Code 37243
Telephone: 615-532-5970
E-mail Brad.Turner@tn.gov
Fax Number 615-532-9940

8. Authorizing Signature

Signature:

Date: November 3, 2021

/S/

State Medicaid Director or Designee

First Name: Stephen
Last Name Smith
Title: Director
Agency: Division of TennCare
Address 1: 310 Great Circle Road
Address 2: Click or tap here to enter text.
City Nashville
State Tennessee
Zip Code 37243
Telephone: 615-507-6444
E-mail Patti.Killingsworth@tn.gov
Fax Number 615-741-1092

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.