

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850



Disabled and Elderly Health Programs Group

April 2, 2020

Jacey Cooper
State Medicaid Director
Director's Office, MS 0000
P.O. Box 997413
Sacramento, CA 95899-7413

Dear Ms. Cooper,

We are writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is approving California's request to amend the following 1915(c) Home and Community-Based Services (HCBS) waivers with the Emergency Preparedness and Response Appendix K in order to respond to the COVID-19 pandemic:

WAIVER TITLE	CMS AMENDMENT CONTROL NUMBER
Home and Community Based Alternatives Waiver	CA.0139.R05.03
Multipurpose Senior Services Program	CA.0141.R06.01
HIV/AIDS	CA.0183.R05.02
HCBS Waiver for Californians with Developmental Disabilities	CA.0336.R04.05
California Assisted Living Waiver	CA.0431.R03.01

The amendments that the state has requested in the Appendix K are effective from February 4, 2020, through June 30, 2020, and apply in all locations served by the individual waivers for anyone impacted by COVID-19.

For each waiver, we have included the approved Appendix K pages with this correspondence. Please utilize the waiver management system for HCBS waivers for any further amendments to these waiver programs other than Appendix K.

If you need assistance, feel free to contact Deanna Clark of my staff at 410-786-4697 or by e-mail at deanna.clark@cms.hhs.gov or Mary Marchioni at 303-844-7094 or by e-mail at mary.marchioni@cms.hhs.gov.

Sincerely,

Alissa M.
Deboy -S

Digitally signed by Alissa
M. Deboy -S
Date: 2020.04.02
14:50:15 -04'00'

Alissa Mooney DeBoy
Director

Enclosure

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. This appendix may be completed retroactively as needed by the state.

Appendix K-1: General Information

General Information:

- A. **State:** California
- B. **Waiver Title:** HCBS Waiver for Californians with Developmental Disabilities
- C. **Control Number:** CA.0336.R04.05
- 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.

1) Nature of Emergency:

COVID-19 is a respiratory illness caused by a novel virus that has been spreading worldwide. Community-acquired cases have now been confirmed in California. The Governor’s Office of Emergency Services (OES), the California Department of Public Health (CDPH), and the Department of Health Care Services (DHCS) are gaining more understanding about the spread of, and impact of, COVID-19 on the population as time progresses, and the situation is changing daily. The State of California has been working in close collaboration with the United States’ Department of Health and Human Services and local Medi-Cal Home and Community-Based Services (HCBS) providers to monitor and plan for the potential spread of COVID-19.

2) Number of Individuals Affected and the State’s Mechanism to Identify Individuals at Risk:

On March 4, 2020, California’s Governor declared a State of Emergency in response to the COVID-19 outbreak. As of March 12, 2020, there are 1,215 presumptive cases of COVID-19 in the United States, including 198 confirmed cases and four fatalities in California. Public Health officials expect the number of cases in California to increase, and while the general population are expected to experience mild flu-like symptoms, the population receiving HCBS Waiver services is at a greater risk for experiencing more severe symptoms, hospitalization, and death.

3) Roles of State, Local, and Other Entities Involved in Approved Waiver Operations:

As of March 12, it is anticipated that all individuals enrolled on the waiver (currently approximately 135,000) may potentially be impacted, either directly or indirectly, by COVID-19. Regional centers, under contract with the State Department of Developmental Services (DDS), coordinate and oversee the provision of services for those enrolled on the waiver.

4) Expected Changes needed to Service Delivery Methods:

To prevent existing and potential Waiver Participants from exposure to COVID-19, DDS will allow the following changes to current Waiver service delivery methods:

- a) Temporarily change service locations to allow services such as Day Services to be provided in the participant’s home (more details in section K-2(b)(iv);
- b) Temporarily modify provider qualifications if a participant decides to self-direct to an individual to provide a service, as long as the individual is at least 18 years of age and possess the skills and/or experience to provide the service, as verified by the participant and Financial Management Services provider;
- c) Temporarily modify service plan development requirements for in-person attendance of service plan development and monitoring meetings, and allow the option for telephonic or live virtual video conferencing in lieu, and in accordance with HIPAA; and
- d) Temporary authority to make retainer payments for Habilitation, Behavioral: Intervention Services, and Day Services due to absences for this emergency.

DDS anticipates that the COVID-19 outbreak will directly impact Regional Center service delivery methods for two to three months, and possibly longer. Therefore, State reporting requirements related to the performance measures data may be impacted by a decrease in face-to-face visits; however, telephonic or video assessments will be attempted instead and documented.

F. Proposed Effective Date: Start Date: February 4, 2020
Anticipated End Date: June 30, 2020

G. Description of Transition Plan: N/A

H. Geographic Areas Affected: The State of California

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

14.4.4 DEPARTMENT OF DEVELOPMENTAL SERVICES (DDS)

Management: Supports the disaster management activities with agency representative in the EOC, as requested by the CHHS or Cal OES.

Care and Shelter: Following a disaster assessment, may provide facilities for shelter, food preparation, and medical and other specialized/adaptive equipment and supplies for individuals residing specifically in state-operated facilities such as DDS' state-operated community facility and the developmental centers. Coordinates with regional centers to identify and respond to the needs of the developmental services community.

Resources: After developmental center and state-operated community facility emergency needs for DDS staff and consumers are fulfilled, supports the CHHS activities and resource requests from Cal OES.

Public Health and Medical: Provides demographic and health information on individuals with intellectual and developmental disabilities served by DDS. May provide limited personnel with behavioral health, medical, and healthcare administration experience, including expertise to assist with assessment of shelter sites for incorporating individuals with intellectual and developmental disabilities, under the guidance of CHHS. Coordinates with regional centers to identify and respond to the needs of the developmental services community.

Public Information: Provides communication professionals to support the health and medical response, under the guidance of CHHS.

Care and Shelter: Provides coordination to meet mental health and substance use requirements for shelters, as requested. May provide staff for Functional Assessment Service Team (FAST).

Public Health and Medical: Ensures that Medi-Cal, Children's Health Insurance Program (CHIP), and Major Risk Medical Insurance Program (MRMIP) enrollees continue to receive medical care in the event of a disaster. Assesses whether there is a need to modify or waive Medi-Cal, CHIP, and MRMIP eligibility requirements in the affected area. Assists impacted mental health and substance use disorders facilities to secure approval to provide services and to claim for Medi-Cal reimbursement. Facilitates payments to Medi-Cal, CHIP, and MRMIP providers/plans and rural primary care clinics to ensure their continued ability to provide care. Provides information on bed availability of skilled nursing facilities, mental health, and substance use disorders facilities in respective areas. Assists, as needed, to coordinate community mental health disaster response services and activities, and to organize and coordinate communications with county mental health departments related to local mental health disaster response. Coordinates available State agency resources to support organizations providing emergency health and behavioral health services.

Law Enforcement: May supply limited number of sworn peace officers and unmarked vehicles.

Volunteer and Donation Management: Assists in coordination of mental health volunteers.

Appendix K-2: Temporary or Emergency-Specific Amendment to Approved

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]

The following services identified below may be provided in alternate locations (e.g. the participant's home, hotels, family homes, and other community settings) if needed, and agreed to upon by the participant:

- Day Services

- Behavioral Intervention services (individual)
- Occupational Therapy
- Physical Therapy
- Psychology Services
- Prevocational Services
- Communication Aides
- Housing Access Services
- Supported Employment Individual
- Speech, Hearing, and Language Services
- Community Living Arrangements

Additionally, to the extent requested by the participant, parent, guardian, or other authorized legal representative, a service typically provided in-person may be provided telephonically, or via live virtual video conferencing. Prior to the delivery of a service by electronic communications, the service provider must notify the regional center that the consumer(s) or representative agrees to remote or virtual services in lieu of in-person services. The regional center shall send a follow-up letter to the family, in the family's preferred language, confirming that at the family's request, virtual or remote services will be provided in lieu of in-person services, which may include:

- Day Services
- Behavioral Intervention services (individual)
- Occupational Therapy
- Physical Therapy
- Psychology Services
- Prevocational Services
- Communication Aides
- Housing Access Services
- Supported Employment Individual
- Speech, Hearing and Language Services
- Community Living Arrangement Services

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

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.]

c. **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.]

If a participant chooses to temporarily self-direct the services listed below, individuals providing the service must be at least 18 years of age and possess the skills and/or experience to provide the service, as verified by the participant and Financial Management Services provider. The other requirements for providers of these services (e.g. education, accreditation, etc.) would not apply if participants choose to self-direct these services.

- Community Living Arrangement Services (Supported Living Provider)
- Day Services
- Supported Employment

- 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.]

- d. **Temporarily modify processes for level of care evaluations or re-evaluations (within regulatory requirements).** [Describe]

California will extend the requirement for annual level of care re-evaluations that are due in months of March, April, and May 2020. Any re-evaluations due in this timeframe will be completed by the end date of this Appendix K, June 30, 2020.

- e. **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].

- f. **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.]

California will temporarily modify requirements for in-person attendance of service plan development and monitoring meetings. DDS will allow the option for virtual or remote visits to be conducted in lieu of a face-to-face meetings. In instances where the consumer or consumer's representative requests a remote planning meeting, the

regional center will send a follow up letter in the consumer's preferred language confirming the request and include contact information for the consumer's service coordinator and their supervisor.

- g. **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]
- h. **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.]
- i. **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.]

California will make retainer payments for Habilitation services which include personal care: Habilitation, Behavioral Intervention Services, and Day Services– Retainer payments are available only for absences (maximum 30 consecutive days) in excess of the average number of absences experienced by the provider during the 12 month period prior to February of 2020. Retainer payments would only be made for the services listed when providers are not able to provide services using the flexibilities described in K-2-b-iv and services were not provided whether in person or virtually.

Note: pursuant to California Code of Regulations 51535(a)(3), payments may be made to a skilled nursing facility for a maximum of 30 days for patients who are on approved leave of absence.

- j. **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]

California will temporarily expand self-direction opportunities to include the following services: Supported Employment, Day Services, and Community Living Arrangement Services. The same processes and safeguards regarding self-direction opportunities included in Appendix E apply for these temporarily available services including the provision of information to the participant regarding their responsibilities and functions as either an employer or co-employer, the required use of a Financial Management Services provider, vendored by the regional center to perform selected administrative functions such as payroll, taxes, unemployment insurance, etc.



- k. **Increase Factor C.** [Explain the reason for the increase and list the current approved Factor C as well as the proposed revised Factor C]
- l. **Imminent needs of individuals in the waiver program.** [Explanation of changes]

Contact Person(s)

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

First Name:	Joseph
Last Name	Billingsley
Title:	Program Policy and Operations Branch Chief
Agency:	Department of Health Care Services
Address 1:	1501 Capitol Avenue, MS 4502
Address 2:	P.O. Box 997437
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State	CA
Zip Code	95899-7437
Telephone:	(916) 713-8389
E-mail	Joseph.Billingsley@dhcs.ca.gov
Fax Number	N/A

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

First Name:	Greg
Last Name	Nabong
Title:	Chief, Program Operations Branch
Agency:	Department of Developmental Services
Address 1:	1600 9 th Street
Address 2:	
City	Sacramento
State	CA
Zip Code	95814
Telephone:	(916) 653-3749
E-mail	Greg.Nabong@dds.ca.gov
Fax Number	

Signature:

/S/

Date: March 14, 2020

State Medicaid Director or Designee

First Name:	Jacey
Last Name	Cooper
Title:	State Medicaid Director
Agency:	California Department of Health Care Services
Address 1:	1501 Capitol Avenue
Address 2:	PO Box 997413, MS 0000
City	Sacramento
State	CA
Zip Code	95899-7413
Telephone:	(916) 449-7400
E-mail	Jacey.Cooper@dhcs.ca.gov
Fax Number	(916) 449-7404

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 which the state is temporarily modifying, enter the entire service definition and highlight the change. State laws, regulations and policies referenced in the specification are 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:	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"/>
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"/>



¹Numerous 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.