

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

February 16, 2023

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

Dear Director 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) waiver with the Emergency Preparedness and Response Appendix K in order to respond to the state's natural disaster of statewide storms and flooding:

WAIVER TITLE	CMS AMENDMENT CONTROL NUMBER
HCBS Waiver for Californians with Developmental Disabilities	CA.0336.R04.25

The amendment that the state has requested in the Appendix K is effective from January 4, 2023 through February 4, 2023; it applies in all locations served by the individual waiver for anyone impacted by the storms and flooding.

Please note that as you are using the approved COVID-19 Appendix K flexibilities for the storms and flooding, should those Appendix Ks close before you have resolved the issues for the storms and flooding, the state is able to amend this natural disaster Appendix K to add those flexibilities and to extend this Appendix K to January 3, 2024, which will allow for a full 12 months.

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 Daphne Hicks of my staff at 214-767-6471 or by e-mail at Daphne.Hicks@cms.hhs.gov or Marge Sciulli at 410-786-0691 or by e-mail at Margherita.Sciulli@cms.hhs.gov.

Sincerely,



Alissa Mooney DeBoy, Director
DEHPG

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

General Information:

A. State: California

B. Waiver Title: HCBS Waiver for Californians with Developmental Disabilities

C. Control Number: CA.0336.R04.25

D. Type of Emergency (The state may check more than one box):

<input type="radio"/>	Pandemic or Epidemic
<input checked="" 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) Severe Winter Storm. On January 4, 2023, California’s Governor declared a statewide State of Emergency related to a series of atmospheric river systems hitting California beginning December 27, 2022. These storms brought high winds and substantial precipitation which resulted in river and urban flooding.

These storms threaten critical infrastructure and have forced the closure of, and caused damage to, highways and roads. The storms have also caused levee and culvert failures, causing mandatory evacuations in severely impacted counties.

It is forecasted that additional and continuing storms will threaten California, bringing heavy rainfall, expected flooding, strong winds and wind gusts, falling debris, downed trees, and widespread power outages.

2) It is anticipated that all individuals enrolled on the waiver (currently approximately 147,000) may potentially be impacted, either directly or indirectly, by the severe winter storms.

3) Regional Centers are the assigned private agencies that are responsible for coordinating services for waiver consumers in the affected areas that impacted both consumers and providers.

4) This appendix K amendment identifies that the state may provide temporary retainer payments for eligible providers of specified services.

**F. Proposed Effective Date: Start Date: January 4, 2023
Anticipated End Date: February 4, 2023**

G. Description of Transition Plan.

All activities will take place in response to the impact of the severe winter storms, as efficiently and effectively as possible based upon the complexity of the change.

H. Geographic Areas Affected:

State of California

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

[California State Emergency Plan](#)

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. ___ 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].

[Redacted]

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.]

[Redacted]

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]

[Redacted]

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.]

[Redacted]

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.]

Retainer payments are available for providers of the following services that include personal care and/or components of personal care:

- Habilitation
- Behavioral Intervention Services
- Day Services

During the time period of California's statewide State of Emergency related to a series of atmospheric river systems, beginning January 4, 2023, retainer payments are available at 100% of the current rate only for absences (maximum of 30 consecutive days) in excess of the average number of absences experienced by the provider during the 12-month period prior to January 2023.

Retainer payments will be utilized exclusively according to the purpose for which they were authorized. Providers may only receive and/or utilize one retainer payment(s) for one type of state of emergency time period.

Note: The maximum of 30 consecutive days is consistent with California Code of Regulations 51535(a)(3), bed hold payments made to a skilled nursing facility for a maximum of 30 days for patients who are on approved leave of absence.

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]

Contact Person(s)

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

First Name: Nichole
Last Name: Kessel
Title: Home and Community-Based Services Branch Chief
Agency: Department of Health Care Services
Address 1: 1501 Capitol Avenue, MS 4502
Address 2: P.O. Box 997436
City: Sacramento
State: CA
Zip Code: 95899-7437
Telephone: 916-713-8345
E-mail: Nichole.Kessel@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: Jonathan
Last Name: Hill
Title: Chief, Federal Programs Operations Section
Agency: Department of Developmental Services
Address 1: 1215 O Street
Address 2: Click or tap here to enter text.
City: Sacramento
State: CA
Zip Code: 95814
Telephone: (916) 653-4541
E-mail: Jonathan.Hill@dds.ca.gov
Fax Number: N/A

8. Authorizing Signature

Signature: 

Date: 02/01/2023

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: P.O. Box 997413, MS 0000
City: Sacramento
State: CA
Zip Code: 95899-7400
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:	<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
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"/> Provider managed

ⁱ Numerous changes that the state may want to make necessitate authority outside of the scope of section 1915(c) authority. States interested in changes to administrative claiming or changes that require section 1115 or section 1135 authority should engage CMS in a discussion as soon as possible. Some examples may include: (a) changes to administrative activities, such as the establishment of a hotline; (b) suspension of general Medicaid rules that are not addressed under section 1915(c) such as payment rules or eligibility rules or suspension of provisions of section 1902(a) to which 1915(c) is typically bound.