

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**

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March 31, 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 COVID-19 pandemic:

WAIVER TITLE	CMS AMENDMENT CONTROL NUMBER
HCBS Waiver for Californians with Developmental Disabilities	CA.0336.R04.23

The state's approved Appendix K is effective February 4, 2020 through six months after the end of the federal public health emergency (PHE) for COVID-19. The amendment that the state has requested in the Appendix K is additive to those previously approved; it applies in all locations served by the individual waiver for anyone impacted by COVID-19. The purpose of the amendment is to add one-time supplemental payments. Also, effective January 1, 2023, the state is implementing rate increases for providers of the identified services.

The state has identified its intent to use money realized from section 9817 of the American Rescue Plan (ARP). Approval of this action does not constitute approval of the state's spending plan. The state must have an approved spending plan in order to use the money realized from section 9817 of the ARP.

We have included the approved Appendix K pages with this correspondence. Please utilize the waiver management system for the HCBS waivers for any further amendments to these waiver programs other than the 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](mailto:Daphne.Hicks@cms.hhs.gov) or Marge Sciulli at 410-786-0691 or by e-mail at [Margherita.Sciulli@cms.hhs.gov](mailto:Margherita.Sciulli@cms.hhs.gov).

Sincerely,



Alissa Mooney DeBoy, Director  
DEHPG

Enclosure

# 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>i</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: General Information

### General Information:

A. State: CA

B. Waiver Title(s): 

HCBS Waiver for Californians with Developmental Disabilities
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C. Control Number(s): 

CA.0336.R04.23
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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 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 to all individuals impacted by the virus or in response to the virus.

This Appendix K is additive to the Appendix K approved April 2, 2020, and the Appendix K approved on March 10, 2021, to extend the end date. The purpose of this amendment is to:

- Add supplemental payments for specified provider agencies that have voluntarily reported information on direct service providers (DSP) retention and turnover during 2021.
- Provide rate increases for specified services effective January 1, 2023 per the California Budget Act of 2022 (SB 154) and as described in Stage two of the 2019 Rate Study. These rate increases are included in the state's HCBS-DD Waiver via the pending HCBS-DD Waiver Renewal, routing number CA.0336.R05.00, currently under CMS review for approval.

The State intends to use funds from section 9817 of the American Rescue Plan (ARP) Act for both Supplemental Payments and Rate Increases.

F. **Proposed Effective Date: Start Date: February 4, 2020 Anticipated End Date: Six months after the end of the Public Health Emergency**

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. The state intends to submit an amendment to the HCBS waiver for permanent inclusion of supplemental payments. Increases associated with Stage two of the 2019 Rate Study are included in the Waiver Renewal, currently under CMS review.

H. **Geographic Areas Affected:**

These actions will apply to all individuals, across the State of California, for the HCBS Waiver for Californians with Developmental Disabilities waiver impacted by the COVID-19 virus pandemic.

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

[State of California Emergency Plan October 2017](#) (p. 116)

14.4.4 DEPARTMENT OF DEVELOPMENTAL SERVICES (DDS)

## 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.]

DDS seeks to implement the second stage of the 2019 Rate Study increases for specified services effective January 1, 2023 per the California Budget Act of 2022 (SB 154). The rate study covered services with rates established under the median rate, cost statement, the Alternative Residential Model, as well as rates set in statute or regulation. The first stage of the Rate Study Increases was effective April 1, 2022. The second stage, effective January 1, 2023, will include an increase equal to 50 percent of the difference between a provider's rate that was effective on March 31, 2022, and the rate models that would apply to their service. These rate increases are included in the state's HCBS-DD Waiver via the pending HCBS-DD Waiver Renewal, routing number CA.0336.R05.00, currently under CMS review for approval.

Rate models for each corresponding service can be found at:

<https://www.dds.ca.gov/rc/vendor-provider/rate-study/rate-models/>.

No reductions will occur for provider rates already above the rate recommended by the rate study prior to June 30, 2026, at which time provider rates will be adjusted to equal the rates for other providers in the provider's service category and region.

The provider types listed below will receive the above referenced second stage rate increase:

**Behavior Intervention Services**

- Behavior Analyst
- Associate Behavior Analyst
- Behavior Management Assistant
- Behavior Management Consultant
- Client/Parent Support
- Parent Support Services
- Behavioral Technician

**Community Living Arrangement Services (Licensed/Certified Residential):**

- Adult Residential Facility
- Adult Residential Facility for Persons with Special Healthcare Needs
- In Home Day Program
- Residential Care Facility for the Elderly
- Family Home Agency
- Group Home

**Community Living Arrangement Services (Supported living Services provided in a Consumer's Own Home (Non-Licensed/Non-certified))**

- Supported Living Provider

**Community-Based Day Services:**

- Community Integration Program
- Community Activities Support Program
- Adaptive Skills Trainer
- Personal Assistance
- Independent Living Specialist
- Activity Center
- Adult Development Center
- Behavior Management Program
- Independent Living Program

- Social Recreation Program

**Therapeutic/Activity-Based Day Services:**

- Specialized Recreation Therapy

**Mobility Related Day Services**

- Mobility Training Services Agency
- Mobility Training Specialist

**Homemaker**

- Homemaker

**Family/Consumer Training**

- Dentist
- Dental Hygienist
- Marriage and Family Therapist
- Social Worker
- Speech Therapist
- Occupational Therapist
- Occupational Therapy Assistant
- Physical Therapist
- Physical Therapy Assistant
- Registered Nurse
- Licensed Vocational Nurse

**Non-Medical Transportation:**

- Transportation Company
- Transportation - Additional Component
- Transportation – Assistant
- Transportation Broker

**Respite Care**

- In-Home Respite Agencies
- Individual Respite Providers
- Participant-Directed Respite

**Prevocational Services**

- Work Activity Program
- Supported Employment Group

**Supported Employment (Individual)**

- Supported Employment Programs

**Community Based Training Service**

- Community-Based Training Provider

**Supplemental Payments**

CA DDS is providing supplemental payments to eligible providers for completion of a data collection survey that will establish baseline information from which DDS, agencies and stakeholders may assess challenges, evaluate the impact of existing initiatives and shape future policies to improve workforce stability.

The survey collects data pertaining to DSP tenure, turnover, vacancy rates, wages, and other compensation including benefits, recruitment and retention, and front-line supervisor support. The survey also includes questions related to the impact of the COVID-19 pandemic on the DSP workforce.

A single payment of \$8,000 will be paid to provider agencies after completion and submission of this data collection survey. The source of the non-Federal share of the payment is from an

appropriation of funds to the Department of Developmental Services through the California Budget Act. Eligible providers will retain 100% of the payment. All surveys needed to be completed and returned to the state no later than June 30, 2022. Payments to eligible providers will be completed no later than June 30, 2023.

The State intends to use funds from section 9817 of the American Rescue Plan (ARP) Act for both Supplemental Payments and Rate Increases.

**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.]



**I. \_\_ 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:** Nichole  
**Last Name:** Kessel  
**Title:** HCBS Policy Branch Chief  
**Agency:** Department of Health Care Services  
**Address 1:** 1501 Capitol Avenue, MS 4502  
**Address 2:** P.O. Box 997437  
**City:** Sacramento  
**State:** CA  
**Zip Code:** 95899-8389  
**Telephone:** (916) 809-4977  
**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:** 1/27/2023

\_\_\_\_\_  
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** 95899-7413  
**Telephone:** (916) 449-7400  
**E-mail** Jacey.Cooper@dhcs.ca.gov  
**Fax Number** (916) 449-7494

## 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>
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

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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.