

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: New York

B. Waiver Title(s):

Office for People with Developmental Disabilities (OPWDD)
Comprehensive Home and Community Based Services (HCBS) Waiver

C. Control Number(s):

NY 0238.R06.07

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

X	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 (e.g. closure of day programs, etc.)

New York seeks to amend the original Appendix K to the OPWDD Comprehensive 1915(c) HCBS Waiver serving people with intellectual and/or developmental disabilities (I/DD) HCBS waiver 238 (R06.01) approved on April 7, 2020 with subsequent revisions. All approved changes in prior CMS Appendix K approvals remain in effect due to the continuing nationwide Public Health Emergency determination made by the Secretary of the Department of Health and Human Services.

This amendment enacts provisions of the CMS-approved spending plan and narrative for Section 9817 of the American Rescue Plan Act (ARPA). The NYS plan was partially approved effective August 25, 2021.

- a. COVID-19 Workforce Performance Incentive. This is a retroactive one-time performance payment for Direct Support Professionals and Family Care (FC) Providers implemented through a supplemental payment mechanism. This payment will be directed to staff who worked full- or part-time and FC providers who delivered services during the period of March 2020 to September 2021, who are still employed by the agency and, for FC providers, who continue to deliver services.
- b. Workforce longevity and retention bonus. This is a bonus payment to promote, encourage, and support direct care staff and FC provider retention.
- c. Additionally, payments will be made to staff and FC providers who are fully vaccinated to recognize the value this decision brings to the service delivery system.
- d. Enhancement of current rates for Intensive Behavioral Support Services (IBS). The enhanced funding will be used to increase clinician wages and expand the availability of services.

F. Proposed Effective Date: Start Date: 03/07/20. **Anticipated End Date:** Six months following the end date of the Public Health Emergency for COVID-19.

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.

H. Geographic Areas Affected:

These actions will apply across the waiver to all individuals impacted by the COVID-19 virus

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

N/A

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. 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.]

Supplemental Payments for Workforce Stabilization

Temporary increases in payment rates are authorized in the state's Section 9817 spending plan and therefore will be funded through the 9817 resources.

To address the critical Direct Support Professional and Family Care staffing shortage stemming from the COVID-19 emergency, OPWDD is implementing three supplemental payments for waiver service providers. These payments are in addition to the amount billed by the provider for the HCBS Waiver service. The following Waiver services are eligible for supplemental payments: Day Habilitation, Prevocational Services, Residential Habilitation, Respite, Supported Employment, Community Habilitation, Pathway to Employment, Intensive Behavioral Services and Fiscal Intermediary (for staff serving individuals in the self-direction program).

A supplemental payment will be made to qualifying HCBS provider agencies based upon the number of Direct Support Professionals (DSPs) and Family Care (FC) providers who qualify for employee incentives. The value of the supplemental payment will be based on provider survey data or Consolidated Fiscal Reporting (CFR) as described below. The full value of the provider's supplemental payment will be paid to qualified workers. For the purposes of these payments, DSPs are defined as those who are reported in the position as a Title Code 200 Series in the New York State CFR Manual. The term FC provider refers to the person who provides FC residential habilitation services under the auspice of an HCBS FC provider agency. These payments are mutually exclusive, meaning that staff are eligible for all three payments if the established criteria are met. The parameters for the employee incentives are:

1. **Employee service during the COVID emergency.** A payment of \$1,000 per full-time employee who served in the capacity of a DSP or FC provider during the period of the first payroll that occurred on or after March 17, 2020 to the first payroll that occurs on or after September 1, 2021 for at least 90-days and continues to be employed by the provider agency. Payments will be prorated for part-time employees.

The \$1,000 is approximately 3% of the statewide average salary for DSPs in NYS. NYS's intent is to provide a 'flat' payment rate for the COVID service payment, with the understanding that the longevity and retention payments will be sensitive to the employee's base salary and therefore will result in higher payments for employees with longer tenure. These payments are intended to recognize that DSPs who worked during the pandemic should be recognized and rewarded for their service.

2. **Longevity and Retention Payment.** A payment that is available to qualified workers who are employed by an eligible, OPWDD-certified HCBS provider in a DSP or FC Provider capacity. To bolster a more sustainable HCBS workforce, supplemental payments include a Longevity Bonus and Retention Bonus. For non-profit provider agencies employing DSPs, each

bonus will be equal to 20% of the provider's payroll expenditures for DSPs, adjusted for salary-sensitive fringe benefit costs, as reported in the CFR for the period ending December 31, 2019 for Calendar Year CFR filers and the period ending June 30, 2019 (for Fiscal Year CFR filers). For DSPs hired by people self-directing their services, the bonuses will be based upon the wage approved for payment and is also calculated at 20% of the wage approved for payment. For FC providers, the bonuses will be equal to 20% of the current difficulty of care payment rate. The bonuses are required to be fully paid to eligible DSPs and FC providers as described below.

- a. The Longevity Bonus will be retroactive and cover the period from April 1, 2020 to March 31, 2021. Longevity payments will be made for DSP staff and FC Providers who worked during this prior period and remain on the agency's payroll through the first complete payroll that ends on or after September 1, 2021.
- b. The Retention Bonus will be prospective and cover the period from April 1, 2021 to March 31, 2022. Retention payments will be made for DSP staff and FC Providers who worked during this period and remain on the agency's last complete payroll that ends on or prior to March 31, 2022. The bonus will be paid at the end of the retention period. The end date of the retention period is six months after the end of the PHE not to exceed March 31, 2022.

3. **Vaccination Incentive Payment.** A payment that is available to qualified workers who are employed by an eligible, OPWDD-certified provider in a DSP or FC Provider capacity and who have completed the COVID-19 vaccination regimen as of the first complete payroll that ends on or after December 1, 2021. Self-Directed DSPs are also eligible for this payment. The vaccination payment is established at approximately 1.4% of the salary for Direct Support Professionals (DSPs) in NYS. Payments will be available as follows:

- a. A payment of \$500 per employee who is employed on a full-time basis
- b. A payment of \$250 per employee who is employed at least, but not less than 20 hours/week, and
- c. A payment of \$125 for part-time employees who are employed less than 20 hours/week.

Agencies qualify for the supplemental payments described above if the provider agency was active in the delivery of an HCBS Waiver service delivered by DSPs during the period from March 2020 and September 2021. Activity is demonstrated by the eMedNY claiming of at least one OPWDD HCBS Waiver service. A provider that only submitted HCBS Waiver claims for Retainer Payments is not eligible for the supplemental payment.

Providers eligible to receive the supplemental payment retain 100% of the total computable expenditure claimed by the Medicaid agency to CMS. The provider subsequently must make all funds available directly to qualified DSP and FC providers, net of any salary-sensitive fringe benefits costs attributable to these supplemental payments.

The flow of funds for these supplemental payments will differ from other HCBS Waiver services, which are adjudicated through eMedNY as service payments tied to individual service recipients. These supplemental rate payments will be made as lump-sum payments using eMedNY. The issuance of supplemental payments will be based on CFR data or a survey issued by NYS and completed by the provider agency and returned to NYS. The provider agency's Executive Director and Board Chair must sign an attestation verifying the accuracy of the number of qualified employees for each category of incentive payment that is reported in the survey, as well as confirm that these supplemental payments, net of any salary-sensitive fringe benefits, will be made available and paid to eligible staff. OPWDD will then calculate the total supplemental payment due the provider agency and establish the appropriate, provider specific rates in eMedNY. Supplemental payments will only be made to providers operating under fee for service. The value of the supplemental payment will then be reported to CMS on the CMS-64. Supplemental payments will be subject to audit and review to ensure program compliance.

Intensive Behavior Services (IBS) Fee Adjustment

In accordance with the CMS-approved spending plan and narrative for Section 9817 of the American Rescue Plan Act (ARPA), OPWDD is enhancing IBS payments effective July 1, 2021 to address the behavioral health needs of individuals with IDD which has been exacerbated during the pandemic. The product fee is a one-time payment for the development of a Behavior Support Plan (BSP) and the $\frac{1}{4}$ hour fee funds the implementation of the person's BSP by IBS staff. Intensive Behavior Services (IBS) Fee Adjustment is specific to fee-for-service providers.

REGION	CURRENT PRODUCT FEE	ENHANCED PRODUCT FEE Effective 7/1/2021
WESTERN & FINGER LAKES	\$1,749.09	\$2,296.55
CENTRAL, BROOME & SUNMOUNT	\$1,749.09	\$2,296.55
CAPITAL DISTRICT	\$1,749.09	\$2,296.55
HUDSON VALLEY & TACONIC	\$1,883.63	\$2,473.21
METRO, BROOKLYN, STATEN ISLAND & B. FINESON	\$2,018.18	\$2,649.87
LONG ISLAND	\$1,883.63	\$2,473.21
REGION	CURRENT 1/4 HOUR BILLING UNIT	ENHANCED 1/4 HOUR BILLING UNIT Effective 7/1/2021
WESTERN & FINGER LAKES	\$17.49	\$22.97
CENTRAL, BROOME & SUNMOUNT	\$17.49	\$22.97
CAPITAL DISTRICT	\$17.49	\$22.97
HUDSON VALLEY & TACONIC	\$18.84	\$24.73
METRO, BROOKLYN, STATEN ISLAND & B. FINESON	\$20.18	\$26.50
LONG ISLAND	\$18.84	\$24.73

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: Phil
Last Name: Alotta
Title: Associate Health Planner, Office of Health Insurance Programs
Agency: NYS Department of Health
Address 1: 99 Washington Avenue
Address 2: One Commerce Plaza, Suite 1208
City Albany
State New York
Zip Code 12210
Telephone: (518) 486-7654
E-mail Phil.alotta@health.ny.gov
Fax Number (518) 473-1764

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

First Name: Katherine
Last Name Marlay
Title: Dep. Commissioner
Agency: OPWDD
Address 1: 44 Holland Avenue
Address 2: Click or tap here to enter text.
City Albany
State NY
Zip Code 12229
Telephone: 518-486-6466
E-mail Katherine.marlay@opwdd.ny.gov
Fax Number N/A

8. Authorizing Signature

Signature: _____ **Date:** 11/9/2021

/S/ _____
State Medicaid Director or Designee

First Name: *Brett*
Last Name *Friedman*
Title: Acting Medicaid Director
Agency: NYS Department of Health
Address 1: 99 Washington Ave, Suite 1715
Address 2: Click or tap here to enter text.
City Albany
State New York
Zip Code 12210
Telephone: (518) 474-3018
E-mail Brett.friedman@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	
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 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.