

# 1915(c) Home and Community-Based Services Waiver

## Instructions and Technical Guidance

### APPENDIX K: Emergency Preparedness and Response

#### Brief Overview

This appendix was developed as a standalone appendix to be utilized by the state during emergency situations. It should be used by the state to advise CMS of expected changes to its waiver operations or to request amendment to its approved waiver. It includes actions that states can take under the existing Section 1915(c) home and community-based services (HCBS) waiver authority in order to respond to an emergency. This appendix may be completed retroactively, as needed, by the state, in accordance with the timeframes set forth in the Section entitled “Policies Concerning Amendment” in the Instructions and Technical Guide for 1915(c) HCBS waivers. In the event that the state is making permanent changes to the structure and operation of their waiver, the changes reflected in this appendix should be also included in the appropriate appendices throughout the existing waiver document. CMS has created this appendix in order to reduce the administrative burden during times of emergencies. In addition, CMS is committed to being responsive and sensitive to the pressures and timeframes that the state is operating under, and we will prioritize such amendments for review.

Numerous changes that the state may want to make necessitate authority outside the scope of the 1915(c) authority. States interested in changes to administrative claiming or changes that require 1115 or 1135 authority should engage their CMS Regional Office 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 in 1915(c), such as payment rules, eligibility rules or suspension of provisions of 1902(a) to which 1915(c) is typically bound. The state may not make changes to the waiver for a waiver year that has already expired or include any changes not allowed under statute, such as the inclusion of room and board costs.

CMS encourages states to begin preparations to ensure that acute and primary medical resources are available to meet the needs of individuals served through HCBS. CMS offers this appendix in the hopes that it will provide a streamlined approach for amendments to 1915(c) waivers when emergencies arise. It should not, however, supplant the state’s comprehensive plan for emergency preparedness. There are numerous resources available to states to assist them in developing broad based strategies for addressing emergencies. A few helpful links are noted below, but CMS encourages states to work in close cooperation with their state emergency preparedness resources, as well.

[Link to the Federal Emergency Management Agency Resources Website](#)

[Link to Ready.gov](#)

[Link to Federal Disability Resources Emergency Preparedness Website](#)

[Link to Centers for Disease Control and Prevention Emergency Preparedness Website](#)

[Link to National Institutes of Health Disaster Preparation and Recovery Website](#)

[Link to US Food and Drug Administration Emergency Preparedness Website](#)

[Link to US Department of Health & Human Services Emergency Preparedness Website](#)

As a part of the State's overall preparations for emergency situations, CMS encourages states to engage individuals and families in these efforts. Assisting individuals to prepare for emergency situations can be a key to successful system-wide contingency planning. For individuals in the waiver, this effort should begin during the person-centered planning process (and described in the approved waiver document). However, these efforts should further include training and information for individuals and the people that support them to provide them with the information and resources necessary to begin individualized contingency plans, and to arm them with the tools to ensure that their back-up plans are current.

Appendix K should be submitted for each affected waiver. Appendix K is currently in Word version only so the state should submit Appendix K to the CMS RO SPA/Waiver Mailbox. Please note that temporary additional services shall be reflected in the 372 form. Added services, costs, and utilization changes would be included for the waiver year affected. Added capacity should also be reflected in the 372 form.

### **Things to Consider**

- Please keep in mind that Fair Hearing Rights under the provisions of 42 CFR 431, Subpart E may apply. Please review the CMS technical guidance provided in Appendix F of the HCBS Waiver Technical Guide for information regarding fair hearings.
- If operated with a concurrent 1915 (b) waiver, the state may need to request commensurate modifications to their 1915(b) waiver.

## **Requirements: Emergency Preparedness and Response**

*Detailed Instructions for Completing Appendix K*

### ***Item K-1: General Information***

#### **Item 1-A: State**

##### **Instructions**

Enter the state name.

#### **Item 1-B: Waiver Title**

##### **Instructions**

If the waiver has a title (e.g., “Innovations Waiver”), enter the title. Otherwise, leave blank.

#### **Item 1-C: Control Number**

##### **Instructions**

List the waiver number. The waiver number should be the next sequenced amendment number. For example, waiver number 0123.R01.01 would become 0123.R01.02.

#### **Item 1-D: Type of Emergency**

##### **Instructions**

Indicate the type of emergency. If the type of emergency is not listed, specify the type of emergency under the “other” category. The state may check more than one box. If the state has multiple emergencies affecting different geographical areas and requiring different changes by type of emergency, the state should break out the information by type of emergency in the appropriate sections.

#### **Item 1-E: Brief Description of Emergency**

##### **Instructions**

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 the service delivery methods, if applicable. The state should provide this information for each emergency checked in K-1-D above if different geographical areas are affected and if different modifications in waiver operations are needed.

#### **Item 1-F: Proposed Effective Date**

##### **Instructions**

Enter the proposed effective start date of the amendment. The proposed effective start date is the date that the amendment would take effect.

Enter the anticipated end date of the amendment. The end date is the last day that the changes would be in effect.

A state may propose that an amendment take effect prospectively on some future date. An amendment also may be made retroactive to the first day of the waiver year (or another date after the first day of the waiver year) in which the amendment is submitted unless the amendment would result in a reduction of the number of persons served, services provided or providers. In these circumstances, amendments may only take effect on or after the date when the amendment is approved by CMS. For additional detail, please see the CMS HCBS Waiver Technical Guide, Policies Concerning Waiver Amendments and Item 1-E.1 (Proposed Effective Date) for information regarding effective dates and the section on “Policies Concerning Waiver Amendments”.

If the state seeks to modify its originally proposed effective dates/time span for the use of this appendix, the state can simply transmit a revised K-1 (submitted through the SPA/Waiver Mailbox for your respective Regional Office).

### **Item 1-G: Transition Plan**

#### **Instructions**

Some of the temporary modifications that states make (e.g., modifying targeting criteria, adding or modifying services, increasing factor C, increasing individual cost limits, etc.) may result in individuals being temporarily enrolled in the waiver, or temporarily accessing additional services. A transition plan is necessary for waiver participants who might be adversely affected when the temporary changes cease and the waiver reverts back to its original form. Please see the “Transition Plan” Section of the CMS HCBS Waiver Technical Guide for additional guidance or information regarding transition plans. Please note that all applicable Fair Hearing rights apply.

### **Item 1-H: Geographic Areas Affected**

#### **Instructions**

Specify the geographic areas affected by the emergency. For example, the state may use geographic areas such as counties, cities, state planning regions or human catchment areas, or political subdivisions such as counties or municipalities of the state. When the geographic area affected is limited to political subdivision, list the subdivisions. When the geographic area affected is limited to another type of geographic area such as state planning region, describe the area. The descriptions must be specific enough so that the geographic areas where the emergency is in effect are clearly specified. If multiple emergencies are checked in K-1-D, please specify the geographic areas affected by each emergency.

### **Item 1-I: Description of State Disaster Plan**

#### **Instructions**

Describe the state’s disaster plan, if available. Reference to external documents is acceptable. This field is not required. CMS recognizes that this might be a subset of the state’s larger emergency disaster plan. States may have elements in their disaster plans

relating to waivers that may be applicable. If so, please provide a description or a citation.

## ***K-2: Temporary or Emergency-Specific Amendment to Approved Waiver:***

### ***Instructions***

Below is a list of temporary activities that the state may wish to undertake during an emergency. These activities require an amendment to the approved waiver. This appendix is to be utilized as the amendment. The state is not required to make changes to other appendices for the temporary changes specified below. However, should the state wish to make permanent changes to the waiver, the state will need to add an amendment request in the waiver management system (WMS) to modify the appropriate appendices (Main Module through Appendix J) in the approved waiver.

### **Item K-2-a: Access and Eligibility**

#### **K-2-a-i: Temporarily increase individual eligibility cost limits**

##### ***Instructions***

Indicate, if applicable, whether the state will impose a temporary increase in individual cost limits required for waiver eligibility during an emergency in order to assure the individual's health and welfare. Specify the temporary cost limit. For more information regarding individual cost limits, see Appendix B-2 of the CMS HCBS Waiver Technical Guide.

##### ***Technical Guidance***

There may be instances where the state chooses to increase the individual cost limit for the waiver to enable more individuals to access HCBS. Such an increase may allow individuals to enter or stay in the waiver, who, because of the emergency situation, require services and supports that may exceed the previously imposed cost limits.

#### **K-2-a-ii: Modify additional targeting criteria**

##### ***Instructions***

Indicate, if applicable, whether the state seeks to expand the additional targeting criteria to serve additional individuals.

##### ***Technical Guidance***

Some states may operate waivers for a fairly narrow target group. In emergency situations, the state may seek to broaden the population served through that waiver to ensure that individuals in the state have access to a broad array of HCBS. For example, a waiver that currently serves individuals who have Alzheimer's disease may be expanded to serve a broader aged population to enable the provision of HCBS and forestall institutionalization in emergency situations.

### **Item K-2-b: Services**

### **K-2-b-i: Temporarily modify service scope or coverage**

#### ***Instructions***

Indicate, if applicable, whether the state intends to temporarily modify the service scope or coverage. For each service affected, complete Section A- Services to be Added/Modified During an Emergency by entering the entire service definition and highlighting the change(s).

#### ***Technical Guidance***

The State may need to temporarily modify a service scope or coverage. For each service affected, complete Section A by entering the entire service definition and highlighting the changes from the current approved waiver service definition. This will reflect the proposed change or expanded scope of the services existing service specifications and provider qualifications.

### **Item K-2-b-ii: Temporarily exceed service limitations**

#### ***Instructions***

Indicate, if applicable, adjustments that may be taken to allow individuals to receive more services than those limitations identified in the state's approved waiver. Such exceptions could include allowances for exceeding individual service limitations identified in Appendix C-1/C-3 or allowances for exceeding limitations on sets of services or other limitations identified in Appendix C-4.

#### ***Technical Guidance***

States frequently include limitations on the amounts or duration of services included in the waiver. In the event of an emergency, individuals may require additional supports or supports for a longer period than in ordinary times. In those instances, states may allow for exceptions to the service limitations in order to ensure the health and welfare of individuals served. Use this section to describe any changes to services limitations that the state would deem permissible in emergency situations.

### **K-2-b-iii: Temporarily add services to the waiver**

#### ***Instructions***

Indicate, if applicable, whether the state intends to temporarily add services to the waiver in order to address the emergency. Complete Section A- Services to be Added and/or Modified During an Emergency.

#### ***Technical Guidance***

Regulations at 42 CFR 440.180(b)(9) permit a state to request the authority to offer "other" services that are not expressly authorized in the statute as long as it can be demonstrated that the service is necessary to assist a waiver participant to avoid institutionalization and function in the community. During emergency situations, the state may wish to temporarily add services to an existing waiver in order to respond to the emergency. Examples of such

services might include: emergency counseling, heightened case management to address emergency needs, emergency medical supplies and equipment, individually directed goods and services, assistive technology, emergency evacuation transportation outside the scope of non-emergency transportation or transportation already provided through the waiver.

The state may also wish to temporarily allow for emergency case management to assist waiver participants in gaining access to necessary medical, social, educational, and other services needed as the direct result of an emergency that causes significant death, injury, exposure to life-threatening circumstances, hardship, suffering, loss of property, or loss or community infrastructure. As with any service, CMS will expect the state to assure that there is no potential service duplication or payment, and that the services would not be available through any other resources.

#### **K-2-b-iv: Temporarily expand settings**

##### **Instructions**

Indicate, if applicable, adjustments to allowable settings where services can be provided that may differ from those identified in the State's approved waiver.

##### **Technical Guidance**

CMS recognizes that settings in which services may be provided may require temporary modification in times of emergency. One example, among many possible, may be to allow participants to receive services in the provider's home. Another example may be a situation where a day program has been closed due to an outbreak of a contagious illness. The day program staff may be available and willing to provide those same services in another location or in individuals' homes. Such changes would not necessarily require formal amendment, however, we recommend that the State advise us when such changes are likely to occur and the safeguards that will be instituted to ensure that individuals receive the necessary services as authorized in their plan of care and that services are provided in the best interest of the individual.

#### **K-2-b-v: Provide services in out of state settings (if not already permitted in the state's approved waiver)**

##### **Instructions**

Indicate, if applicable, whether services will temporarily be provided in out of state settings due to emergency situations.

##### **Technical Guidance**

In accordance with 42 CFR 431.52, the State may elect to provide services to individuals in out of state settings when emergencies arise. This can occur as a regular course of business in 1915(c) waivers, so the state only needs to complete this section if the state has not permitted services to be provided in out of state settings in its current approved waiver. The state may also wish to use this section to advise CMS if large numbers of individuals are requiring displacement. The state should further refer to Olmstead letter #3 (Attachment 3-e) for guidance and recommendations on effectuating such services.

## **Item K-2-c: Family Caregivers or Legally Responsible Individuals**

### **K-2-c: Temporarily permit payment for services rendered by family caregivers or legally responsible individuals**

#### **Instructions**

Indicate if the State elects to allow the provision of services for payment by family caregivers or legally responsible relatives or to modify allowable circumstances for such service provision already authorized in the State's approved waiver. Please indicate the services to which this would apply, relatives and/or legal guardians who may render services, the safeguards in place to ensure that individuals receive necessary services, and the procedures that are in place to ensure that payments are only made for services rendered.

#### **Technical Guidance**

CMS recognizes that States may need to expand the pool of individuals who can provide services in case of emergency. In the event that the State chooses to allow family caregivers or legally responsible relatives to participate in the delivery of services in a way that differs from the policies set forth in the approved waiver, the State should use this section to provide basic information on the situations where this would be acceptable. The State should refer to the Instructions and Technical Guidance on this issue in Appendix C-2 of Version 3.5. Please note that individuals on the OIG's excluded provider list may not receive Medicaid payment, regardless of the relationship to the individual. See related guidance at [www.hcbswaivers.net](http://www.hcbswaivers.net).

## **Item K-2-d: Temporarily modify provider qualifications, types, etc.**

### **K-2-d-i: Temporarily modify provider qualifications**

#### **Instructions**

Indicate, if applicable, whether provider qualifications will be temporarily modified in response to an emergency situation. If the state chooses to modify provider qualifications, list each service affected, list the provider type, and the modification to the provider qualifications.

#### **Technical Guidance**

The waiver assurances at 42 CFR 441.302(a) requires that: (a) there are adequate standards for all types of providers that provide services under the waiver and (b) that the standards must be met when services are furnished. Under normal circumstances, waiver services may only be furnished by providers who have been found to meet all applicable qualifications. During an emergency situation, the state may temporarily modify provider qualifications in order to ensure that waiver participants receive necessary services. For example, a State may wish to identify minimally acceptable provider qualifications during the emergency for a temporary period of time that may be a subset of the total qualifications included in the approved waiver application. Please note that individuals on the OIG's



excluded provider list may not receive Medicaid payment. See related guidance at [www.hcbswaivers.net](http://www.hcbswaivers.net)

#### **K-2-d-ii: Temporarily modify provider types**

##### **Instructions**

Indicate, if applicable, whether provider types will temporarily be modified in response to an emergency situation. Provide an explanation for the modification. List the services affected and the changes in provider types for each service.

##### **Technical Guidance**

CMS recognizes that States may need to expand the pool of available providers or to include non-traditional waiver service providers in the event of an emergency. Such consideration may be given to neighbors or acquaintances who may not typically be providers of services, or may be agencies or entities that provide a specialization that is necessary to address the needs of a particular emergency situation (for example: mold abatement specialists after a flood to provide homemaker/chore-type services).

#### **K-2-d-iii: Temporarily modify licensure or other requirements for settings where waiver services are furnished**

##### **Instructions**

Indicate, if applicable, whether the State will temporarily modify licensure requirements for facilities. Describe the facilities that may be utilized to provide services to waiver participants during emergency situations. Also list the services that will be provided in those facilities.

##### **Technical Guidance**

In an emergency situation, a State may need to provide waiver services in settings that are unforeseen in a typical service delivery situation or may need to modify the typical licensure or certification requirements. The State may need to identify additional settings where services can be provided in situations where individuals are unable to receive services in the settings where they would ordinarily receive them. This section of Appendix K can be used by States to advise CMS of temporary accommodation related to service delivery location to ensure that individuals continue to receive necessary services. It should be noted that if a temporary placement is to exceed 30 days CMS expects the state to make every effort, within reason, to ensure the setting meets the regulatory requirements for home and community-based settings.

#### **Item K-2-e: Process for Level of Care Evaluations and re-evaluations**

##### **K-2-e: Temporarily modify processes for waiver eligibility level of care evaluations and re-evaluations.**

##### **Instructions**

Indicate, if applicable, whether the state intends to temporarily modify the process for level of care evaluations and/or re-evaluations within regulatory requirements, including the required timeframe in which the re-evaluation is completed.

### ***Technical Guidance***

CMS recognizes that states may need to temporarily modify processes for level of care waiver eligibility evaluations or re-evaluations, including the required timeframe in which the level of care re-evaluation must be completed. Provide a description of the proposed modifications. Please note that states may not extend the timeframes for re-evaluations beyond 12 additional months past when the level of care is due.

## **Item K-2-f: Payment Rates**

### **K-2-f: Temporarily increase payment rates -**

#### ***Instructions***

Indicate, if applicable, whether the state intends to temporarily increase provider payment rates for waiver services. 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. No room and board costs should be included in any changes, except as permitted for respite services in certain facilities.

#### ***Technical Guidance***

CMS recognizes that extraordinary circumstances may necessitate adjustments to the payment and utilization estimates contained in the approved waiver. If such changes are necessary, the state should indicate, in the space provided, the proposed modifications. If these modifications are sustained beyond the timeframes identified in K-1, the state will need to make corresponding changes to Appendix J in the approved waiver. It should be noted that this is not an exception to the requirement that the state must demonstrate that the waiver is cost neutral during each year that the waiver is in effect.

## **Item K-2-g: Service Plan**

### **K-2-g: Temporarily modify the person-centered service plan development process and/or individual(s) responsible for service plan development**

#### ***Instructions***

Indicate, if applicable, temporary modifications to the person-centered service plan development process that are necessary as a result of an emergency. Also, indicate any changes pertaining to individuals responsible for person-centered service plan development, including qualifications.

### ***Technical Guidance***

In emergency situations, the state may need to modify its person-centered service plan development process, including individuals who may be instrumental in the development of such plans. The state should describe, in the space provided, any modifications to the existing process of service plan development, any safeguards that will be instituted to address individuals' needs. Such modifications should include emergency specific risk assessment and mitigation techniques. Furthermore, the state should include the strategies that will be employed to ensure that the service plan is implemented as designed for the individual during the period of the emergency, including how the state will ensure that individuals will receive services as authorized.

## **Item K-2-h: Incident Reporting**

### **K-2-h: Temporarily modify incident reporting requirements**

#### ***Instructions***

Indicate, if applicable, whether the state intends to temporarily modify incident reporting requirements, medication management, or other participant safeguards to ensure individual health and welfare, and to account for emergency circumstances.

#### ***Technical Guidance***

If the state modifies their incident reporting requirements, please describe in the space provided the safeguards in place to ensure that the state has timely access to critical information regarding the health and welfare of the individuals served through the waiver. Such changes may include the expansion of individuals responsible for reporting incidents or adjustments to the method or timelines for data collection.

## **Item K-2-i: Payment**

### **K-2-i: Temporarily allow for payment for services for purpose of supporting waiver participants in an acute care hospital or short-term institutional stay**

#### ***Instructions***

Indicate, if applicable, whether the state intends to temporarily allow for payment for services for the purpose of supporting someone 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 by the institutional staff. This may be a helpful tool when states are utilizing such settings for emergency shelter. Please specify the services and clarify how the provided waiver services are unavailable within the settings.

### ***Technical Guidance***

States may need to ensure that individuals have access to necessary personal, behavioral or communication support in order to be successfully treated in a short term hospital or institutional stay. This may become increasingly critical when the healthcare resources in a state are significantly taxed and individuals requiring additional supports are among many citizens requiring timely healthcare. **Please note that this would only be allowed in an Appendix K amendment as a temporary change during an emergency which should not exceed 30 days.**

## **Item K-2-j: Retainer Payments**

### **K-2-j: Temporarily include retainer payments to address emergency related issues**

#### ***Instructions***

A state may elect to make retainer payments to personal assistants when the waiver participant is hospitalized or absent from his/her home for a period of no more than 30-days. See Olmstead Update #3 (July 25, 2000) in Attachment D for additional information. If the state elects to make such payments, describe the circumstances under which such payments are authorized and applicable limits on their duration. This tool is available for personal care and habilitation services.

#### ***Technical Guidance***

Payment to retain providers may be particularly important for individuals and states in emergency situations. This option can be implemented for a time limited basis (not to exceed the limits identified in Olmstead Letter #3).

## **Item K-2-k: Opportunities for Self-Direction**

### **K-2-k: Temporarily institute or expand opportunities for self-direction**

#### ***Instructions***

If applicable, provide an overview of self-direction opportunities and any expansion to self-direction opportunities that will be used during an emergency. List the services that may be self-directed during an emergency. Also, provide an overview of participant safeguards.

***Technical Guidance*** There are many instances where the expansion of self-direction may be a useful option in an emergency situation. States may wish to expand the services available for self-direction, or to expand the decision making authority (for employer or budget authority) that has been imparted to individuals in the waiver. Additionally, the state may seek to temporarily add participant-directed goods and services as a service available under the waiver to enable the individuals to obtain goods and services in accordance with the guidance for this service in the HCBS Waiver Technical Guide that would meet specific needs arising from the emergency situation. If the state wishes to temporarily add a new service, please complete K-3-b-ii “**Temporarily add services**”.

## **Item K-2-l: Increase Factor C**

### **K-2-lj: Increase Factor C**

#### ***Instructions***

Explain the reason for the increase in Factor C (unduplicated number of participants). Also include the current approved Factor C as well as the proposed revised Factor C.

#### ***Technical Guidance***

During an emergency situation it may be necessary for a state to temporarily increase Factor C due to changes that a state is making in the waiver such as expanding additional targeting criteria in order to serve more individuals. It may also be necessary for a state to temporarily increase Factor C due to an increase in the number of people entering, exiting, and re-entering the waiver. Please note that this will only apply for the duration of the emergency (dates specified by the state with this Appendix K) and should the state wish to make this increase to Factor C permanent, the state will need to add an amendment request in the waiver management system (WMS) to the approved waiver.

## **Item K-2-m: Other**

### **K-2-m: Other changes necessary**

#### ***Instructions***

Indicate, if applicable, additional temporary changes to the 1915(c) waiver that are needed by the state (for example, any changes to billing processes, use of contracted entities, etc.) to address imminent needs of individuals in the waiver program. Provide an explanation of the changes.

#### ***Technical Guidance***

States can temporarily modify their waivers that are permissible under 1915(c) waiver authority during an emergency situation in order to address needs of individuals in the waiver program. CMS is available to provide technical guidance on a case by case basis.