

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.¹ 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): Children’s Waiver

C. Control Number(s):
NY.4125.R05.08

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.

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 is submitting a second Appendix K request adding to the first Appendix K amendment that was approved by CMS on June 16, 2020. This second request makes two changes to existing approved Appendix K language (which continues to be effective): It implements required changes in retainer payments and is extending all reporting deadlines for the 1915c Children's Waiver.

F. Proposed Effective Date: Start Date: March 1, 2020 Anticipated End Date: February 28, 2021

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

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.]

The State confirms that retainer payments are for direct care providers who normally provide services that include habilitation that contains components of personal care and personal care, but are currently unable to due to complications experienced during the COVID-19 pandemic because the waiver participant is sick due to COVID-19; or the waiver participant is sequestered and/or quarantined based on local, state, federal and/or medical requirements/orders. The state will implement a distinguishable process to monitor payments to avoid duplication of billing.

Retainer days are limited to up to three, 30-day episodes per individual.

The Children's Waiver will implement retainer payments as follows:

Retainer payments will be authorized for designated Community Habilitation and Day Habilitation providers that have been billing Community and or Day Habilitation services at any time since April 1, 2019, the inception of the Children's Waiver. These providers will be able to request approval to bill the Retainer Payment.

- Providers will be determined by NYSDOH to be qualified to bill for Retainer Payment by submitting an attestation in template form. Providers will need to verify that Retainer Payment will only be billed for those participants in which Community and or Day Habilitation has been outlined as a service within the Health Home or CYES Plan of Care and who were actively being served by the provider. Assurance of no duplication of billing including residential services.

In order for providers to receive retainer payments, the state requires an attestation that addresses the guardrails below. The state demonstrates how the provider attestation aligns with these guardrails in state policy:

- Limit retainer payments to a reasonable amount and ensure their recoupment if other resources, once available, are used for the same purpose. The retainer payment will not exceed the payment for the relevant service;
- Collect an attestation from the provider acknowledging that retainer payments will be subject to recoupment if inappropriate billing or duplicate payments for services occurred (or in periods of disaster, duplicate uses of available funding streams), as identified in a state or federal audit or any other authorized third-party review. Note that "duplicate uses of available funding streams" means using more than one funding stream for the same purpose.
- Require an attestation from the provider that it will not lay off staff and will maintain wages at existing levels for the duration of the retainer payment period
- Require an attestation from the provider that they had not received funding from any other sources, including but not limited to unemployment benefits and Small Business Administration loans, that would exceed their revenue for the last full quarter prior to the PHE, or that the retainer payments at the level provided by the state would not result in their revenue exceeding that of the quarter prior to the PHE.
 - If a provider had not already received revenues in excess of the pre-PHE level but receipt of the retainer payment in addition to those prior sources of funding results in the provider exceeding the pre-PHE level, any retainer payment amounts in excess would be recouped.
 - If a provider had already received revenues in excess of the pre-PHE level, retainer payments are not available.

- Retainer payment will be billed by a newly issued locator code at the rate of 80% (eighty percent) of the regular Community and Day Habilitation rate that would have been billed if the participant, with the service on their Plan of Care, would have been served in accordance to the required service modality.
- Those participants that cannot be served through face-to-face or telehealth for these services, will be billed for at 80% of the regular rate, using the new locator code. Providers able to provide face-to-face or telehealth services will bill for the regular service delivery.
- Providers can only bill for the quantity indicated in the plan of care or authorized by the managed care organization (MCO).
- Retainer Payments may not be billed when the participant chooses to receive services through a different provider or disenrolls from the service.

NYSDOH will perform a lookback audit to ensure no duplicate billing was conducted, that Retainer Payments were only billed for participants that had the service on their Plan of Care, were enrolled or served by the provider prior to the retainer payment billing and at the frequency the service was indicated to be delivered, and to verify documentation that the service could not be provided as required or through telehealth/telephone.

m. X_ 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]

During COVID19 State of Emergency, there will be a delay CMS' Evidence Request response report and the CMS' 372 reporting requirements.

The timeframes for the submission of the CMS 372s and the evidentiary package(s) will be extended as needed pursuant to the emergency. In addition, the state may suspend the collection of data for performance measures other than those identified for the Health and Welfare assurance and notes that as a result the data will be unavailable for this time frame in ensuing reports due to the circumstances of the pandemic.

Contact Person(s)

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

First Name: Janet
Last Name Zachary-Elkind
Title: Deputy Director
Agency: New York State Department of Health, Office of Health Insurance Programs
Address 1: 99 Washington Avenue
Address 2: Suite 720
City Albany
State NY
Zip Code 12210
Telephone: 518-473-0919
E-mail Janet.zachary-elkind@health.ny.gov
Fax Number 518-486-2495

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

First Name: April
Last Name Hamilton
Title: Bureau Director
Agency: Click or tap here to enter text.
Address 1: 99 Washington Ave
Address 2: Click or tap here to enter text.
City Albany
State New York
Zip Code 12237
Telephone:
E-mail April.Hamilton@health.ny.gov
Fax Number 518-486-2495


8. Authorizing Signature

Signature:

Date: 8/25/2020

_____/S/_____
State Medicaid Director or Designee

First Name: Donna
Last Name Frescatore
Title: State Medicaid Director
Agency: New York State Department of Health
Address 1: 99 Washington Avenue
Address 2: Suite 211
City Albany
State New York
Zip Code 12210
Telephone: 518-474-3018
E-mail Donna.frescatore@health.ny.gov
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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.