



## Assisted Living Waiver Guidance Relative to the 2019 Coronavirus (COVID-19) Pandemic

Updated July 8, 2020 (*New content is italicized.*)

The purpose of this time-limited guidance is to inform Assisted Living Waiver (ALW) Care Coordination Agencies (CCAs) of temporary operational flexibilities authorized for Home and Community-Based Services (HCBS) waivers during the COVID-19 pandemic. This guidance describes approved flexibilities for ALW in response to the COVID-19 public health emergency (PHE).

### BACKGROUND

On March 4, 2020, the State of California declared a State of Emergency in response to the COVID-19 outbreak. Although the general population largely experiences mild flu-like symptoms, the population receiving HCBS waiver services is at a greater risk for experiencing more severe symptoms, hospitalization, and death. In recognition of the higher likelihood of adverse outcomes impacting the HCBS waiver population, the Department of Health Care Services (DHCS) is working with the Centers for Medicare & Medicaid Services (CMS) to identify and authorize temporary operational flexibilities intended to help meet the needs of waiver participants receiving medically necessary services at home or in the community during the COVID-19 PHE. The emergency flexibilities included in this guidance document are time limited and are a direct response to the meet the needs of the ALW population impacted by the PHE.

### GUIDANCE

In response to the COVID-19 PHE, CMS has authorized the following requests to implement temporary changes to current ALW Waiver service delivery methods:

1. *On June 8, 2020, CMS approved DHCS' request to extend the end date, from June 30, 2020 to February 28, 2021 or the end of the pandemic, of the temporary flexibilities included in an [Appendix K](#) amendment that was approved on April 2, 2020. As such, through February 28, 2021, the following, temporary, operating flexibilities are approved for implementation to help ensure continuation*

of Waiver services and to protect the health and safety of Waiver participants and service providers during the COVID-19 PHE:

- A. Temporarily suspend the 60-day enrollment period for applicants who are unable to complete the application submission process and/or secure a bed in an assisted living facility because they or the facility have been impacted by the COVID-19 virus. Instead, applicants who are assigned a waiver slot and are unsuccessful in securing placement in a facility are allowed to keep the slot without being placed back on the ALW wait list, *through February 28, 2021 or the end of the pandemic.*
- B. DHCS is monitoring those applicants with six-month pend notices that would have expired during the COVID-19 State of Emergency. DHCS will close without enrollment those with a pend notice on their normal schedule but applicants from this group will not go back on the wait list. The CCA will need to submit an updated application (Assessment and Individual Service Plan) to restart the applicant's six-month calendar with current information that will assist with placement and completion of their enrollment.
- C. Temporarily allow CCAs to conduct telephonic assessments or video conferencing interactions in lieu of, or as an option for, face-to-face visits for initial assessments/enrollments and level of care evaluations or re-evaluations in accordance with HIPAA requirements.
  - i. The CCAs will inform participants via telephone of the plan to decrease face-to-face visits and to provide telephonic or video visits and assessments in lieu of, or as an option for, face-to-face visits.
- D. Temporarily allow forms that require participant or legal representative signatures to be signed, scanned, and emailed to the CCA, or for the documents to be signed digitally, *through February 28, 2021 or the end of the pandemic.*
  - i. Electronic signatures will be accepted but copies with "wet" signatures from the participant or their legal representative should be kept by the participant for their legal representative or at the Community Care Licensed Facility (CCLF) in the participant's file for retrieval at a later date. Copies of the Individual Service Plan (ISP) and Informing Notices should still be provided to the CCLF and the participant and/or legal representative upon completion of each step in the enrollment process through either electronic means or by U.S. mail.
- E. Temporarily modify incident reporting requirements for CCAs by allowing facility staff to submit incident reports on non-standard forms as long as all elements of the state-approved form are present.

- F. Temporarily modify medication management or other participant safeguards to ensure individual health and welfare, and to account for emergency circumstances.
- G. Temporarily allow for an extension of the 31-60 day re-enrollment period for participants who are unable to return to their CCLF by *February 28, 2021 or the end of the pandemic*, because of the COVID-19 outbreak, so that they are not disenrolled as a result of the emergency.
- i. If a participant leaves an assisted living setting due to hospitalization, the CCA will continue to advocate for the participant for up to 30 days for the purpose of coordinating the participant's return to the assisted living setting. If the participant is unable to return after 30 days, the participant will be disenrolled from the ALW. Once the state of emergency is lifted, participants will have 30 days from the day the order is lifted to return to an ALW-approved CCLF without the need to submit reenrollment applications. A complete reenrollment application will be required for those who need 31 to 60 days to return to an ALW CCLF.
  - ii. If a participant is enrolled in the ALW but requests to go home for more than 60 days, they will not lose their slot. Although the participant will retain his or her slot in the waiver, it will be the responsibility of the CCA to outline to participants and/or their legal representatives the risks of removing a member from a CCLF as follows:
    - The flexibility holds the ALW spot in the waiver but **does not** guarantee a bed at the same CCLF should the participant and/or their legal representative choose not to continue paying rent for the room and/or bed;
    - Possible participant exposure to COVID-19 from family or others who have not been under quarantine in the past 14 days prior to the participant moving to the family home;
    - Possible exposure to COVID-19 from an infected participant to the family; and
    - Without an order from the Governor, a CCLF may deny return during the emergency once the participant has been subjected to possible exposure.

Families should also be made aware that the ALW does not cover the following:

- Home modifications or equipment;
- Medical support staff for the home; and
- In-Home Supportive Services.

CCAs are also responsible for ensuring families have a clear understanding of the support needs of the ALW participant including their physical, mental, nutritional, medical, and medication needs. In addition to “face-to-face” electronic or in-person monthly visits and 6-month reassessments, CCAs should maintain, at a minimum, weekly contact with the member or an identified family contact.

Once the state of emergency is lifted, participants will have 30 days from the day the order is lifted to return to an ALW-approved CCLF without the need to submit reenrollment applications. A complete reenrollment application will be required for those who need 31 to 60 days to return to an ALW CCLF.

- II. On May 27, 2020, [CMS approved](#) two consolidated Appendix K amendments DHCS requested on behalf of all six of California’s HCBS Waivers for the period of March 1, 2020 through February 28, 2021; the authorized emergency flexibilities include:
- A. [Temporarily pausing enforcement of the Home and Community-Based Settings sub-provision 42 CFR 441.301\(c\)\(4\)\(vi\)\(D\) during the PHE](#). Under sub-provision (D), individuals receiving services in an HCBS setting must be able to have visitors of their choosing at any time. However, to minimize the spread of infection during the COVID-19 PHE, providers are authorize to restrict visitors to protect the safety of residents and staff.
  - B. [Temporarily Suspension of Conflict of Interest Restrictions \(available through the hyperlink above\)](#). To address the COVID-19 PHE personnel crisis, CMS approved California’s request to temporarily suspend the conflict of interest restriction that prevents case management entities from providing the direct services they manage. When direct service providers are unavailable as a result of the COVID-19 PHE, case management entities qualify as the only willing and qualified entity under 42 CFR 441.301(c)(1)(vi), and may provide direct care services pursuant to the authorized care plan. All other safeguards, provider qualifications in the approved waiver will apply to all waiver service providers.  
  
*Prior to providing direct care services to an individual when their direct care service providers are unavailable because of the PHE, the ALW CCA must notify DHCS and document why it is necessary for their organization to provide the direct care services as a case note in the participant’s case file.*
  - C. [Temporarily extend the due dates of federally-required 1915\(c\) Waiver reports, including the CMS 372s and the evidentiary package\(s\), as needed pursuant to the PHE](#). Temporarily allow the State to suspend the collection of data for performance measures, other than those identified for the Health and Welfare

*assurance, when the required data is unavailable or cannot be collected because of the PHE.*

## **ADDITIONAL FLEXIBILITIES**

### HCBS Settings Requirements for Specified Settings

*On May 8, 2020, CMS approved an 1135 waiver to temporarily allow ALW services to be provided in settings that have not been determined to meet the HCBS settings criteria. The [temporary waiver of HCBS settings requirements](#) are intended to accommodate circumstances in which an individual requires relocation to an alternative setting to ensure the continuation of needed home and community-based services.*

### Requirement to Obtain Beneficiary and Provider Signatures of HCBS Person-Centered Service Plan

*On May 8, 2020, CMS granted temporary authority under an 1135 waiver to allow California to [waive written consent](#) required for 1915(c) waiver programs, including ALW. The temporary authority permits CCAs to accept and document verbal consent as an alternate to obtaining written consent via signature for person-centered service plans, known as the ISP under ALW.*

### State Fair Hearing Request Extension

CMS approved a temporary extension of the state hearing request timeframe, allowing beneficiaries to have more than 90 days, up to an additional 120 days, to request a State Fair Hearing. Specifically, individuals for whom the 90-day deadline would have occurred between March 1, 2020, through the end of the COVID-19 public health emergency, are now allowed up to an additional 120 days to request a State Fair Hearing. All other existing State Fair Hearing processes remain unchanged. DHCS has issued [guidance](#) on Medi-Cal Fee-For-Service (FFS) State Fair Hearings Section 1135 Waiver Flexibilities Relative to COVID-19. A Notice of Action (NOA) [template](#) specific to the COVID-19 timeframe extension is available.

### Provision of ALW Services via Telehealth

Medically necessary services can be delivered by home health agency (HHA) providers and CCAs via telehealth, as deemed appropriate by the HHA provider or CCA. HHA providers and CCAs should seek to implement telehealth methods that would provide remote consultation as an alternate means of providing critical, medically necessary services. DHCS has issued [guidance](#) on Medi-Cal Payment for Telehealth and Virtual/Telephonic Communications Relative to COVID-19, describing the use of telehealth as an alternate means of providing critical, medically necessary services. For more information regarding Medi-Cal's telehealth policy, please see the Medi-Cal Provider Manual (Medicine: Telehealth).

### Discretion in Enforcement of Compliance with Health Insurance Portability and Accountability Act (HIPAA) Regulations during the COVID-19 Response

During the COVID-19 public health emergency, covered health care providers, subject to the HIPAA Rules, may seek to communicate with patients and provide telehealth services through remote communications technologies. Some of these technologies, and the manner in which they are used by HIPAA-covered health care providers, may not fully comply with the requirements of the HIPAA Rules.

The Office of Civil Rights (OCR) will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency.

A covered health care provider that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 emergency can use any non-public facing remote communication product that is available to communicate with patients. Additional information is available from the [U.S. Department of Health & Human Services Health Information Privacy](#).

### Provider Enrollment

On March 23, 2020, CMS Approved California's 1135 Waiver Request to allow the temporary enrollment of providers who are enrolled as Medicaid Providers in other states. If a certified provider is enrolled in Medicare or with a state Medicaid program other than California, California may provisionally, temporarily enroll the out-of-state provider for the duration of the public health emergency in order to accommodate participants who were displaced by the emergency under certain circumstances. See Provider Enrollment [guidance](#) from CMS for additional information on flexibilities.

### CMS Blanket Waivers

CMS has issued a number of blanket waivers for many Medicare provisions, which primarily affect requirements for individual facilities, such as hospitals, long term care facilities, home health agencies, etc. Waiver or modification of these provisions does not require individualized approval. The current blanket waivers in response to the COVID-19 PHE can be found at: <https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>.

### Support for At-Risk Individuals Staying at Home

DHCS has also issued [guidance](#) on Preventing Isolation of and Supporting Older and Other At-Risk Individuals to Stay Home and Stay Healthy During COVID-19 Efforts. This information includes resources for older/at-risk individuals who may need assistance with basic needs like groceries and prescriptions, and much-needed social interaction and connection while stay-at-home orders are in effect.

The CCAs will also provide resources to ALW participants and family members as more information becomes available. Additional information about approved operational flexibilities for HCBS waivers can be found on DHCS' COVID-19 [webpage](#).

## **QUESTIONS**

For further information about this guidance, please submit a question to the ALW email inbox at [ALW.IR@DHCS.CA.GOV](mailto:ALW.IR@DHCS.CA.GOV).