



Home and Community-Based Alternatives 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 Home and Community-Based Alternatives (HCBA) Waiver Agencies of temporary operational flexibilities authorized for Home and Community-Based Services (HCBS) waivers during the COVID-19 pandemic. This guidance describes the approved flexibilities for the HCBA Waiver 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 needs of the HCBA Waiver population impacted by the PHE.

GUIDANCE

CMS has authorized the following requests to implement temporary changes to current HCBA Waiver service delivery methods under the authority of Appendix K: Emergency Preparedness and Response amendments:

- 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 permit payment for services rendered by family caregivers or legally responsible individuals to provide Waiver Personal Care Services (WPCS) when authorized WPCS providers are prevented from providing services because of COVID-19. By temporarily allowing participants to receive personal care services from their spouse or parent (*of a minor child*) living with them, the potential for exposing participants to the virus is reduced. Family caregivers or legally responsible individuals shall only be authorized to provide WPCS in accordance with the Plan of Treatment (POT), for the number of hours that are not provided by other direct service providers within a 24-hour period. Spouses/parents of minor children providing WPCS hours must document the number of hours they provide WPCS in time sheets that are submitted to the State's Case Management Information and Payrolling System (CMIPS) II for payment.
- B. Temporarily modify provider qualifications to permit individuals who are not enrolled as In-Home Supportive Services (IHSS) providers, *to provide WPCS under temporary approval of the Waiver Agency*. In cases in which a participant's WPCS provider is unable to provide care, the State would allow WPCS to be provided by an individual who is not enrolled as an IHSS provider through the County Public Authority by way of temporary approval by the Waiver Agency. To receive retroactive payments for services provided during the emergency, the individual would be required to enroll as an IHSS provider within 60 days of Waiver Agency approval.
- C. Temporarily modify provider types to allow for Certified Nurse Assistants to provide Private Duty Nursing (PDN), in addition to currently authorized HCBS Waiver Nurse Providers (Registered Nurses, Licensed Vocational Nurses, and Certified Home Health (CHHA)) and Home Health Agencies. This will open up the pool of caregivers who can provide custodial type care in the home. Many health plans and others allow CNAs to provide this level of care in lieu of a CHHA. PDN is the only service that would be affected by the provider type modification.
- D. Temporarily modify licensure or other requirements for settings where waiver services are furnished – specifically, allowing telehealth (telephonic, or virtual live video conferencing) as an alternative option to face-to-face interactions.
- E. Temporarily modify processes for waiver eligibility level of care evaluations and re-evaluations via telephonic or virtual live video conferencing as an alternative option to face-to-face interactions, in accordance with HIPAA requirements. DHCS will temporarily allow HCBA Care Management Teams to perform reassessments and provide monthly case management telephonically or by

virtual video conferencing with participants to continue to monitor the health and safety of the population. DHCS requires affected Waiver Agencies to document the reasons for the delayed in-person visits and that any late requirements will be completed the following month, or as soon as possible, no later than *through February 28, 2021 or the end of the PHE.*

- F. Temporarily pause waiver disenrollments of participants who are re-institutionalized, beyond the 30-day limit, because they or their caregiver(s) have contracted the virus, and/or if it is unsafe for them to return to the community because they would be exposed to the virus or without medically necessary services, through *February 28, 2021 or the end of the PHE.*
 - G. Temporarily allow forms that require participant or legal representative signatures to be signed, scanned, and emailed to the Waiver Agency, or for the documents to be signed digitally, through *February 28, 2021 or the end of the PHE.* The hard copies with wet signatures can be kept in the participant's residence file until Waiver Agencies can retrieve them.
- 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 authorized 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 Waiver Agency 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.

III. In addition to extending the end date of the original HCBA Appendix K amendment (see section I. above), the [Appendix K](#) amendment that was approved by CMS on June 8, 2020 authorizes DHCS to temporarily adjust the rates for personal care services to align with the Emergency Paid Sick Leave Act of the Families First Coronavirus Response Act to allow two weeks of emergency paid sick leave when a HCBS Waiver Personal Care Service (WPCS) provider is unable to work because of the COVID-19 PHE.

COVID-19 sick leave may only be claimed if the employee is unable to work for one of the following reasons related to COVID-19:

- The employee is subject to a quarantine or isolation order;
- The employee has been advised by a health care provider to self-quarantine;
- The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- The employee is caring for an individual who is subject to a quarantine or isolation order or has been advised to self-quarantine by a health care provider;
- The employee is caring for his/her child whose school or childcare facilities have been closed, or whose childcare provider is unavailable, due to COVID-19 precautions; or
- The employee is experiencing any other substantially similar concerns.

The State-approved county governmental, contracted, and private individual provider rates are documented in a fee schedule, which has been updated to reflect the additional sick leave mandated under the Emergency Paid Sick Leave Act, and is effective for services provided after that date through December 31, 2020. This fee schedule is published on the California Department of Social Services (DSS) website at: <https://www.cdss.ca.gov/inforesources/ihss/county-ihss-wages-rates>

ADDITIONAL FLEXIBILITIES

HCBS Settings Requirements for Specified Settings

On May 8, 2020, CMS approved an 1135 waiver to temporarily allow HCBA waiver 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 the HCBA Waiver. The temporary authority permits HCBA Waiver Agencies to accept and document verbal consent as an alternate to obtaining written consent via signature for person-centered service plans, known as the POT under the HCBA Waiver.

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 HCBA Services via Telehealth

Medically necessary services can be delivered by waiver service providers and Waiver Agencies via telehealth, as deemed appropriate by the waiver service provider or Waiver Agency. Waiver service providers and Waiver Agencies 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 HCBA Waiver Agencies will also provide resources to HCBA 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 contact your assigned DHCS Contract Manager or submit a question to the HCBA email inbox at: HCBAAlternatives@dhcs.ca.gov.