

# 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.<sup>1</sup> 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:** ND

**B. Waiver Title(s):** Developmental Disabilities Traditional IID/DD HCBS Waiver; Children’s Hospice; Medicaid Waiver for Home and Community Based Services; Autism Spectrum Disorder (ASD) birth through thirteen; Medically Fragile Children

**C. Control Number(s):** ND.0037.R08.03; ND.0834.R02.03; ND .0273.R05.05; ND.0842.R02.03; ND.0568.R02.04

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

<input checked="" type="checkbox"/>	<b>Pandemic or Epidemic</b>
<input type="checkbox"/>	<b>Natural Disaster</b>
<input type="checkbox"/>	<b>National Security Emergency</b>
<input type="checkbox"/>	<b>Environmental</b>
<input type="checkbox"/>	<b>Other (specify):</b>

**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 appendix K is additive to the appendix k approved on April 7, 2020 and includes the following changes. For the Developmental Disabilities Traditional IID/DD HCBS Waiver, updated retainer payment for 3- 30-day periods and extension on submission of the CMS 372s and the evidentiary package. For the Medicaid Waiver for Home and Community Based Services, modify Family Personal Care provider requirements to include additional relatives who are eligible to provide care, increase the family personal care rates to assure provider capacity and require prior approval to enroll a provider using the modified provider qualifications.

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

**G. Description of Transition Plan.**

**H. Geographic Areas Affected:**

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

## 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.]

The decision to temporarily modify provider qualifications as described below must be prior approved by the State Medicaid agency and will be based on the individualized needs of waiver recipients impacted by COVID-19 taking into consideration provider availability and individual choice of provider.

The minimum qualifications are required for the following services for providers:

- Chore
- Companionship
- Family Personal Care
- Homemaker
- Non-medical transportation
- Respite care
- Supervision

Agency Providers:

Competency Requirements: Direct service provider must be a:

- Current CNA, RN, LPN, or OT licensed in state of ND
- CNA whose ND license has expired within the last six months
- RN, LPN, OT licensed in good standing in another state per Executive Order 2020/05.
- Direct Service Associate employed by licensed Developmental Disability provider per NDAC 75-04-01

Individual Providers:

Competency Requirements: Direct service provider must be a:

- Current CNA, RN, LPN, or OT licensed in state of ND
- CNA whose ND license has expired within the last six months
- RN, LPN, OT licensed in good standing in another state per Executive Order 2020/05.
- Direct Service Associate employed by licensed Developmental Disability provider per NDAC 75-04-01
- Legal family member

Agency & Individual Minimum Screening Requirements:

- QSP termination/ denial list
- Collection/ accounts receivable
- High risk provider list
- DEX verification
- State exclusion list
- Certified nurse assistant registry
- Board of Nursing credential verification
- Adult Foster Care - Fingerprinting and BCI check

Agency providers must assure minimum screening requirements are met within 30 days of hire. Agency staff may provide services during the 30 days.

State provider enrollment staff will assure minimum screening requirements are met at time of temporary enrollment for individual providers.

QSPs approved during the national emergency will be given a temporary enrollment approval. Payment to providers who are temporarily enrolled will cease within six months from the termination of the public health emergency, including any extensions, unless a provider has submitted an application that meets all requirements for Medicaid participation and that application was subsequently reviewed and approved by North Dakota before the end of the six month period after the termination of the public health emergency, including any extensions.

Agency & Individual provider re-enrollment for all waiver services:

- Extend re-enrollment period for 6 months during the pandemic beyond the current 2 year deadline for providers who are up for renewal during this period.

**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. \_\_\_  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.]

Medicaid waiver for home and community based services – Individual providers - Increase maximum rate for family personal care from \$76.67 to no more than \$150 per day. The change in rate is based on the same rate methodology included in the approved waiver. It is being increased to be competitive with other programs and is being increased to assure access to services and the long term sustainability of a sufficient provider pool of family caregivers.

**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.]



Developmental Disabilities Traditional IID/DD HCBS Waiver; the state will allow up to three episodes of up to 30 consecutive days per beneficiary for personal assistance retainer payments. The state assures a retainer payment will not exceed the payment for the relevant service. The state will 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 duplicate uses of available funding streams, as identified in a state or federal audit or any other authorized third party review. The state will require an attestation from the provider that it will not lay off staff and will maintain wages at existing levels. The state will 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. The retainer payment will not exceed 40% of the providers average revenue for the time period of Oct 2019 - Dec 2019

**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]**

For Developmental Disabilities Traditional IID/DD HCBS Waiver; 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.

## 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:** Click or tap here to enter text.
- Last Name** Click or tap here to enter text.
- Title:** Click or tap here to enter text.
- Agency:** Click or tap here to enter text.
- Address 1:** Click or tap here to enter text.
- Address 2:** Click or tap here to enter text.
- City** Click or tap here to enter text.
- State** Click or tap here to enter text.
- Zip Code** Click or tap here to enter text.
- Telephone:** Click or tap here to enter text.
- E-mail** Click or tap here to enter text.
- Fax Number** Click or tap here to enter text.

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

**First Name:** Click or tap here to enter text.  
**Last Name** Click or tap here to enter text.  
**Title:** Click or tap here to enter text.  
**Agency:** Click or tap here to enter text.  
**Address 1:** Click or tap here to enter text.  
**Address 2:** Click or tap here to enter text.  
**City** Click or tap here to enter text.  
**State** Click or tap here to enter text.  
**Zip Code** Click or tap here to enter text.  
**Telephone:** Click or tap here to enter text.  
**E-mail** Click or tap here to enter text.  
**Fax Number** Click or tap here to enter text.

## 8. Authorizing Signature

**Signature:**

**Date: August 7, 2020**

\_\_\_\_\_/S/\_\_\_\_\_  
State Medicaid Director or Designee

**First Name:** *Caprice*  
**Last Name** *Knapp*  
**Title:** Director of Medical Services  
**Agency:** Department of Human Services- Medical Services Division  
**Address 1:** 600 East Boulevard Ave Dept 325  
**Address 2:** Click or tap here to enter text.  
**City** Bismarck  
**State** ND  
**Zip Code** 58505  
**Telephone:** 701-328-1603  
**E-mail** [ckapp@nd.gov](mailto:ckapp@nd.gov)  
**Fax Number** Click or tap here to enter text.

## 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: Family Personal Care

*Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:*

### Service Definition (Scope):

Family personal care assists individuals to remain with their family members and in their own communities by allowing individuals who want to choose their legal spouse **or other relative who meets the definition in NDAC 75-03-23-05 (6) (c)** as their personal care service provider an option of receiving personal care services under the waiver. Currently personal care services are only available under the Medicaid State Plan and individuals cannot choose their legal spouse as their primary care provider. **This service also differs from Medicaid State Plan - personal care because supervision is an allowable service task to assist individuals who because of their impairments need monitoring to assure health and safety or who have intermittent unscheduled care needs which require the presence of a provider.**

Family personal care provides for the provision of extraordinary care payments to the legal spouse **or other relative** of a recipient for the provision of personal care or similar services.

Personal care or similar services includes, assistance with the ADL's/ IADL's of bathing/ hygiene, dressing, incontinence care, toileting, transferring/positioning, mobility and feeding/eating. It also includes assistance with the tasks of eye care, medication assistance, cognitive supervision, exercise, hoier lift/mechanized bath chairs, indwelling catheter, medical gases, prosthetic orthotics, suppository/ bowel program, ted socks, vital signs, apnea monitor, jobst stockings, ostomy care, postural/bronchial drainage and specialty bed.

### Specify applicable (if any) limits on the amount, frequency, or duration of this service:

Payment will only be made to legal spouses **or relatives** who reside in the same home. Individuals who choose a provider who is not their legal spouse **or other live- in relative** will be served under Medicaid State plan personal care.

Payment will not be made for assistance with the tasks of communication, community integration, housework, laundry, meal preparation, money management, shopping, social appropriateness, and transportation.

This service cannot duplicate personal care that must be provided as part of an Individual Education Plan (IEP) as required by the Individual with Disabilities Education Act while a recipient is attending school. Case managers are required to assure that other third party funding sources do not duplicate waived services.

The cost of this service is limited to a maximum monthly cap set by the Department or through legislative action. This cap may be increased as determined by legislative action.

To avoid duplication, family personal care recipients are not eligible for adult residential care, adult foster care, extended personal care, transitional living, residential habilitation, community support and companionship services.

Family Personal Care is not available to individuals who are eligible to receive such services through the Medicaid State Plan or Early Periodic Screening Diagnosis and Testing (EPSDT).

## Provider Specifications

Provider Category(s) (check one or both):	<input checked="" type="checkbox"/>	Individual. List types: Individuals- legal spouse or relative as defined in NDAC 75-03-23-05 (6) (c) -Is the spouse of the care provider or the current or former spouse of one of the following relatives of the client: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew.	<input type="checkbox"/>	Agency. List the types of agencies:

Specify whether the service may be provided by (check each that applies):	<input checked="" type="checkbox"/>	Legally Responsible Person	<input checked="" type="checkbox"/>	Relative/Legal Guardian
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**Provider Qualifications** (provide the following information for each type of provider):

Provider Type:	License (specify)	Certificate (specify)	Other Standard (specify)
Individuals			Demonstrating competency in family personal care standards -Enrolled Qualified Service Provider (QSP) N.D.A.C. 75-03-23-07.

**Verification of Provider Qualifications**

Provider Type:	Entity Responsible for Verification:	Frequency of Verification
Individual	ND Medical Services Division	Initial / Re-enrollment every two years, and/or upon notification of provider status change.

**Service Delivery Method**

Service Delivery Method (check each that applies):	<input type="checkbox"/>	Participant-directed as specified in Appendix E	<input checked="" type="checkbox"/>	Provider managed



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<sup>i</sup> 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.