

Appendix K Flexibilities and Policy Decisions: At a Glance November 2023

Background

During the COVID-19 public health emergency (PHE), the Kentucky Department for Medicaid Services (DMS) made temporary changes to 1915(c) home- and community-based services (HCBS) waiver policy through an emergency amendment known as Appendix K. Some of the temporary changes will become permanent policy for participants and providers. To make changes permanent, DMS amended all six (6) of Kentucky’s 1915(c) HCBS waivers and submitted them to the Centers for Medicare and Medicaid Services (CMS) before November 11, 2023. This document explains how the process works and which policies are becoming permanent.

Questions about Appendix K and Related Policy Decisions

What is Appendix K? Appendix K allows states to make temporary changes to waiver policy during emergency situations to address programmatic needs and participant health, safety, and welfare for the duration of the emergency. Appendix K impacts all six (6) of Kentucky’s 1915(c) HCBS waivers:

- Acquired Brain Injury (ABI) Waiver
- Acquired Brain Injury – Long Term Care (ABI-LTC) Waiver
- Home and Community Based (HCB) Waiver
- Michelle P. Waiver (MPW)
- Model II Waiver (MIIW)
- Supports for Community Living (SCL) Waiver

How has Kentucky used Appendix K? As part of Appendix K, CMS authorized DMS to implement temporary rate increases, service adjustments, and operational changes to promote ongoing access to services, quality of services and to sustain the provider base.

How long is Appendix K in effect? Appendix K was scheduled to expire on November 11, 2023, which is six months after the end of the federal PHE declaration. CMS released a State Medicaid Director Letter indicating that *“COVID-19 Appendix K flexibilities currently approved to end six months after the expiration of the PHE may be extended if the state takes action by November 11, 2023, to incorporate desired Appendix K provisions into underlying HCBS programs.”*

Per the letter, Kentucky took action to incorporate Appendix K policies into the waivers by submitting amendments to all six waivers on November 3, 2023 (MIIW) and November 9, 2023 (ABI, ABI LTC, HCB, MPW, and SCL). CMS is now reviewing the submissions and **all Appendix K flexibilities will remain in place until the effective date of the updated waivers**. Upon the effective date of the updated waivers, only the select Appendix K flexibilities written into those waivers and approved by CMS will continue.

Which flexibilities from Appendix K have been included in the amended waivers?

- 50% rate increases for residential services in ABI, ABI LTC, and SCL.
- 50% rate increases for certain non-residential services where providers attest to pass through 85% of the rate to direct care workers.
- 21% rate increases for all other services, excluding those in the MIIW.

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- Allowing limited waiver services to be provided in acute hospital settings under ad-hoc, extraordinary circumstances if the hospital cannot meet immediate health, safety or welfare needs.¹
- Updated Case Management provider qualifications¹ to require that case managers be:
 - A registered nurse or a licensed practical nurse; or
 - Have a bachelor's degree in social work, human services, or a related field; or
 - Have a bachelor's degree in any field not closely related and two years of human services experience; or
 - Have an associate degree in behavioral science, social science, or a closely related field and two years of human services-related experience; or
 - Have three years of human services-related experience.
 - Relevant fields of study may include Rehabilitation, Nursing, Counseling, Education, Gerontology, Human Services, and/or Sociology.
 - Relevant experience may include experience as a case manager or in a related human services field, Certified Nursing Assistant experience, Certified Medical Assistant experience, Certified Home Health Aide experience, Personal Care Assistant experience, paid professional experience with aging and/or disability populations or programs as a case manager, rehabilitation specialist, health specialist or social services coordinator, assessment and care planning experience with clients, experience working directly with persons who have a disability or mental illness, assisting individuals and groups who experience economic disadvantage, employment challenges, abuse and neglect, substance abuse, aging, disabilities, inadequate housing, or working in prevention, health, cultural competencies.

Waiver-specific Appendix K flexibilities that will be made permanent are listed at the end of the document.

Are there any other changes DMS will make in all waiver amendments beyond making Appendix K policies permanent?

DMS included additional changes outside of Appendix K policies. DMS plans to make these updates based on CMS requirements and for consistency across waivers:

- Updated parts of Participant Directed Services (PDS) across waivers, including refined definitions for PDS case management.
- Clarified language and refined definitions for consistency across waivers.
- Standardized waiver performance measures.
- Added language noting the requirement for residential and non-residential providers to comply with the federal HCBS settings requirement as defined in 42 CFR 441.301(c)(4)-(5) and associated CMS guidance.
- Updated cost estimates to align with temporary rate increases defined in Appendix I.

¹ Not included in MIIW.

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DMS made the following additional updates to all waivers based on public comment. Waiver-specific post-public comment updates are listed at the end of the document.

- Clarified the definition of a legally responsible individual and the review process for hiring a legally responsible individual as a PDS employee.
- Updated Goods and Services to make it available to participants receiving traditional and/or PDS.
- Made educational requirements for direct support professionals standards across waivers as applicable.
- Made CPR and First Aid optional at the discretion of participants for PDS employees.

What is next for rates and the rate study?

DMS has submitted rate study findings and recommendations to the Governor’s office for review and consideration as we prepare future budget requests. Budget requests are subject to Legislative review and approval and will be made public during the 2024 legislative session. DMS anticipates submitting an updated rate methodology and resulting benchmark rates to CMS once a budget has been confirmed.

DMS will retain temporary rate increases and legislature-directed rate increases implemented through Appendix K until legislative review of the completed rate methodology study findings and subsequent budget allocation and implementation of long-term, permanent rates.

Next Steps for Kentucky’s 1915(c) HCBS

Present: DMS submitted all six amended waiver applications to CMS on November 3 and 9, 2023, and is awaiting responses.

Future: DMS to submit updated rate methodology and rates to CMS and update waiver-related regulations along with waiver amendments.

TBD: Waivers, including Appendix K policies made permanent, will go into effect after receiving CMS approval. Most Appendix K policies will revert to pre-COVID operations as defined in regulation.

Waiver-Specific Updates

Waiver	Updates
ABI	The following updates were included in the proposed ABI waiver application:

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Waiver	Updates
	<ul style="list-style-type: none"> In-person services or telehealth allowed for Behavior Programming Services, Case Management, Counseling (Individual and Group), Occupational Therapy, and Speech Therapy.² Reduced age requirement for Respite, Personal Care, and Residential staff from 21 to 18. Expanded residential services to allow up to five (5) participants per house.
ABI-LTC	<p>The following updates were included in the proposed ABI LTC waiver application:</p> <ul style="list-style-type: none"> In-person services or telehealth allowed for Behavior Programming Services, Case Management, Counseling (Individual and Group), Occupational Therapy, Physical Therapy, and Speech Therapy.² Reduced age requirement for Respite and Residential staff from 21 to 18. Expanded residential services to allow up to five (5) participants per house.
HCB	<p>The following updates were included in the proposed HCB waiver application:</p> <ul style="list-style-type: none"> Telehealth allowed for Case Management.² Separated case management and financial management into two distinct services in the HCB waiver CMS requirements and for consistency across waivers. Expanded providers for PDS Case Management and Financial Management Services (FMS) to include Community Mental Health Centers (CMHC). Reduced age requirement for Non-Specialized Respite and Attendant Care staff from 21 to 18. Added a new provider type under Attendant Care to promote consistency and address potential concerns regarding existing HCBS settings compliance. <p>The following updates were made to the HCB waiver application based on public comment:</p> <ul style="list-style-type: none"> Updated Home Delivered Meals in HCB to allow “chilled” meals in addition to shelf-stable, frozen, and hot meals, increased the number of allowable meals to two per day, and added food processing establishment to the provider qualifications. Clarified the Attendant Care service limit in HCB to say it is \$200 per day OR 45 hours per week.
MPW	<p>The following updates were included in the proposed MPW application:</p> <ul style="list-style-type: none"> In-person services or telehealth allowed for Positive Behavior Supports, Case Management, Occupational Therapy, Physical Therapy, and Speech Therapy.² Reduced age requirement for Respite, Personal Care, and Attendant Care staff from 21 to 18.

² Per the waiver application, “Telehealth services may be provided under specific circumstances as described in regulation. In person services must be provided whenever possible and at minimum at least every other month. Participation in services via telehealth should be wanted by the participant, person-centered, meaningful and advance established goals. Participants who are offered telehealth by the provider have the right to request in-person services instead.

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Waiver	Updates
	<p>The following updates were made to the MPW application based on public comment:</p> <ul style="list-style-type: none"> • Clarified that the limit on Respite is calculated on the level of care (LOC) year. • Removed the two years of direct support experience for Positive Behavior Supports in MPW
SCL	<p>The following updates were included in the proposed SCL waiver application:</p> <ul style="list-style-type: none"> • In-person services or telehealth allowed for Case Management, Consultative Clinical and Therapeutic (CCT) Services – Nutrition, CCT - Psychological Services, and CCT – Positive Behavior Supports.² • Updated Respite definition to include that service is available to individuals receiving Residential Support Level II. • Reduced age requirement for Respite, Personal Assistance, Residential staff from 21 to 18. • Refined the Person-Centered Coach service definition to align with CMS guidance and prevent duplication with other services. <p>The following updates were made to the SCL application based on public comment:</p> <ul style="list-style-type: none"> • Updated Residential Support Level II to clarify who must complete training in the family home provider or adult foster care. • Clarified provider qualifications for Natural Supports Training in SCL.