



Department of Health

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March 29, 2020
(UPDATED June 25, 2021)

Re: COVID-19 Guidance regarding 1915(c)
HCBS Children's Waiver for Children's Health
Homes and Children, Youth Evaluation
Services (C-YES), HCBS Providers, and
MMCP/HIV SNP

Dear Health Homes Serving Children, C-YES, HCBS Providers, and MMCP/HIV SNP
regarding 1915(c) HCBS Children's Waiver:

The New York State Department of Health (NYSDOH) is providing this guidance to **Health Homes Serving Children, C-YES, HCBS providers, and MMCP/HIV SNP surrounding the 1915(c) Home and Community Based Services (HCBS) Children's Waiver**. The COVID-19 disaster emergency declared by the Governor under Executive Order 202 expired on June 24, 2021.

The HCBS flexibilities outlined in this guidance document due to the COVID-19 Public Health Emergency will continue to be in effect no later than six months after the expiration of the federally declared Public Health Emergency as outlined in Appendix K approved by the Centers of Medicare and Medicaid Services (CMS), or when the Department issues updated guidance, whichever is sooner. It is anticipated that providers will have at least 30 days' notice prior to the termination of these flexibilities.

This guidance is applicable to all HCBS eligible participants either enrolled in Medicaid Managed Care or Fee-for-Service.

HCBS providers should begin to plan for the expiration of the Appendix K and subsequent exceptions by ensuring they prepared to provide HCBS according to regulations and the [HCBS Manual](#).

Background

The health and safety of the State's health care providers and our ability to provide and support patient care remain our priorities. Recently, community-wide transmission of COVID-19 has occurred in the United States (US), and the number of both Persons Under Investigation (PUIs) and confirmed cases are increasing in NYS. The situation with COVID-19 infections identified in the US continues to evolve and is very rapidly changing. It is important for all agencies to keep apprised of current guidance by regularly visiting the Centers for Disease Control and Prevention (CDC) and NYSDOH websites, as well as the NYSDOH Health Commerce System (HCS), for the most up-to-date information for healthcare providers.

- CDC: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- NYSDOH: <https://www.health.ny.gov/diseases/communicable/coronavirus.htm>
- HCS: <https://commerce.health.state.ny.us>

It is important to keep staff updated as the situation changes and educate them about the disease, its signs and symptoms, and necessary infection control to protect themselves and the people they serve. The NYSDOH distributes alerts and advisories on its website and therefore it is vital that providers maintain up-to-date contact with both the CDC and NYSDOH. Providers may wish to provide internal contact information for their staff and clients to call with concerns, reports or questions.

Criteria for screening waiver participants prior to conducting a Face-to-Face Visit

While some HCBS can be delivered effectively via telehealth, in certain instances, face-to-face contact may still be clinically indicated and may be a life safety issue. Prior to conducting face-to-face activities, the provider should ask the participant and/or their guardian or legally authorized representative the following questions:

1. Ask whether the participant has a fever, cough or shortness of breath.
2. Ask the participant, "Have you, or has someone with whom you have had close physical contact, traveled out of the United States within the last 14 days?"
3. (If yes) "To which countries did you/your contact, travel?" For updated information on affected countries visit: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>
4. Ask the participant, "Within the last 14 days, have you had contact with any person(s) under investigation (PUI) for COVID-19, OR with any person(s) known to have COVID-19?"

If the participant screens positive in response to any of these questions, the HCBS staff should ensure that the person has been referred to the appropriate health care provider and coordinate next steps with the participant, their guardian or legally authorized representative, Service Coordinator and their public health/primary care provider.

If the participant has an immediate need for services that must be delivered face-to-face, the HCBS provider should take appropriate measures to ensure service needs are met to safeguard the health, safety and welfare of the participant. HCBS provider staff should follow CDC guidance to make sure precautions are used when conducting face-to-face visits. <https://www.cdc.gov/coronavirus/2019-ncov/infection-control/control-recommendations.html>.

If the participant does not screen positive in response to any of these questions, the face-to-face visit may proceed at the discretion of the provider and with the consent of the participant.

NYS' 1915(c) Home and Community Based Services (HCBS) Children's Waiver Requirements Adjusted and or Waived, Unless Medically Necessary

Service Coordination:

If the waiver participant chooses not to have a face-to-face meeting or its determined that a face-to-face meeting is not appropriate during this emergency, the Health Home or C-YES care manager should use telephonic or telehealth capabilities as outlined in the guidance issued for Health Homes Serving Children: https://health.ny.gov/health_care/medicaid/program/medicaid_health_homes/policy/docs/covid_19_guidance_health_homes.pdf.

If the care manager is using telephonic or telehealth capabilities in lieu of a face-to-face visit, the care manager should respond to all communication from the participant within 24 hours. All communications must be documented and noted in the participant's case record/file. With appropriate participant's consent, the care manager must be in contact with the HCBS providers and are also encouraged to contact other involved providers, informal supports, and family members to ensure other supports are in place.

All care managers are advised to update and revise as necessary Participant Waiver Contact lists, Crisis Plans, and complaint protocols when contacting the participant.

Care managers must ensure that the participant's case records identify all proper documentation, inclusive of all waived regulations, policy, and or guidance as well as if telephonic methods were utilized to meet HCBS requirements.

HCBS/LOC Eligibility Determination:

Health Home and C-YES care managers will continue to conduct HCBS/LOC eligibility determinations and the completion of the HCBS/LOC tool within the Uniform Assessment System (UAS). However, effective immediately the HCBS/LOC assessment may be conducted by telephone or permitted telehealth modalities, as described in the applicable provisions of the Health Home Guidance:

https://health.ny.gov/health_care/medicaid/program/medicaid_health_homes/policy/docs/covid_19_guidance_health_homes.pdf.

Pursuant to applicable state requirements, the Health Home and C-YES care managers must obtain the necessary information to complete the HCBS/LOC eligibility determination from the child/youth, family, involved providers and professionals, and referring entity (if applicable), and with the review of proper documentation to accurately complete the HCBS/LOC.

1. Initial HCBS/LOC Eligibility Determination:

For children/youth newly referred for HCBS enrollment, the HHCM and C-YES evaluator must gather the required documentation for the completion of the appropriate Target Population of the HCBS/LOC Eligibility Determination.

The HHCM and C-YES evaluator must ensure that they have gathered the necessary information by talking (by telephonic methods) with all involved providers, professionals, the child/youth (if age appropriate), the family, and the referring entity (as appropriate). Supporting documentation must be obtained to answer the UAS HCBS/LOC questions. However, the delay in documents being sent due to this emergency, should not delay the completion of the HCBS/LOC tool. If providers and professionals share the information with the HHCM or C-YES evaluator telephonically with the intent of sending the documentation, the HHCM or C-YES evaluator does not need to wait to receive the documentation prior to completing the HCBS/LOC eligibility determination. HHCMs and C-YES evaluators must document the information and how it was obtained in the child's/youth's case record. The HHCM or C-YES evaluator must

follow up within no more than 90 days to ensure the documentation is obtained for the case record.

Reminder: Children/youth who may have a developmental disability condition need to also meet the Medically Fragile conditions, therefore the HCBS/LOC Eligibility Determination should be conducted by the Health Home care manager and C-YES evaluator utilizing the Medically Fragile Target Population whenever possible. For the Target Population of Developmentally Disabled in Foster Care, the OPWDD Level of Care Eligibility Determination (LCED) is required for initial HCBS eligibility. The HHCM or C-YES evaluator should continue to collect the required elements for the initial LCED and send to the OPWDD Children's Liaison for review for the HCBS/LOC Eligibility Determination to be completed in the UAS, as outlined in guidance: https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/docs/ddro_manual_for_childrens_waiver.pdf.

2. *License Practitioner of the Healing Arts (LPHA) Attestation Form:*

- a. During the State of Emergency, for children/youth being discharged from a higher level of care, such as, a hospital, residential treatment facility or center (RTF/RTC), State Hospital, or nursing home; the LPHA Attestation form is **not needed** for the initial HCBS/LOC eligibility determination. The HHCM or C-YES evaluator should collaborate with the higher level of care facility professionals to obtain the necessary documentation and information to complete the HCBS/LOC eligibility determination and to indicate, *“that the child/youth, in the absence of HCBS, is at risk of institutionalization (i.e. hospitalization)”*.
- b. During the State of Emergency, for children/youth referred for an HCBS/LOC eligibility determination by a Licensed Practitioner of the Healing Arts (as outlined on the HCBS LPHA form <https://www.health.ny.gov/forms/doh-5275.pdf>); the LPHA Attestation form is **not needed**. The HHCM or C-YES evaluator should collaborate with the Licensed Practitioner of the Healing Arts professional to obtain the necessary documentation and information to complete the HCBS/LOC eligibility determination and to indicate, *“that the child/youth, in the absence of HCBS, is at risk of institutionalization (i.e. hospitalization)”*.
- c. For all other children/youth referred for an HCBS/LOC eligibility determination, the LPHA form must be completed as required for those Target Populations that require it as part of the HCBS/LOC eligibility Risk Factors.

3. *Completing the LPHA questions in the Uniformed Assessment System (UAS) when Waived (as noted above):*

To be able to have a completed HCBS/LOC eligibility determination, the HCBS/LOC LPHA question in the UAS needs to be properly answered. The HHCM and C-YES will need to answer all Risk Factors and select the LPHA question: *“You have obtained a signed LPHA attestation form, DOH-5275”* and mark it **“yes”**. When the use of the LPHA attestation form is waived in accordance with this guidance, the date entered in

the UAS for receipt of the LPHA Attestation Form will be the date the HHCM or CYES staff is completing the HCBS/LOC assessment in the UAS.

4. *Annual Re-assessment HCBS/LOC Eligibility Determination:*

During the State of Emergency, the annual HCBS/LOC eligibility determination re-assessment requirement is suspended. Annual re-assessments that do not occur as a result of this suspension should be documented in the participant's case record/file. HHCM and C-YES evaluators must continue to monitor the participant's needs and their Plan of Care services to ensure appropriate continuation in the HCBS Children's waiver and should document all updates and reviews in the participant's case record/file. Should the HHCM or C-YES evaluator believe that enrollment in the Children's HCBS Waiver should be discontinued, that decision should be properly documented after discussion with the child/youth (if age appropriate), the family, HCBS providers, other involved professionals, and the Managed Care Plan (if enrolled).

This suspension includes all Target Populations of Serious Emotional Disturbance (SED), Medically Fragile (MF), and Target Populations that are coordinated through OPWDD of Developmental Disabilities Medically Fragile (DD MF) and Developmental Disabilities in Foster Care (DD FSC).

5. *Significant Life Event Re-assessment HCBS/LOC Eligibility Determination:*

During the State of Emergency, the requirement to complete an HCBS/LOC eligibility determination re-assessment due to a Significant Life Event is suspended.

Reminder: When a child/youth enrolled in the Children's Waiver is hospitalized or placed in an HCBS restricted setting, the child/youth may remain in such setting for up to 90 consecutive calendar days while maintaining enrollment in the Children's Waiver. The Health Home and HCBS providers are unable to bill during this time. When the child/youth remains in a hospital or restricted setting for more than 90 consecutive calendar days, the child/youth must be discharged from the Children's Waiver. Should the child/youth, later be discharged after 90 consecutive calendar days, they can be re-referred to the Children's Waiver; however, a new HCBS/LOC eligibility determination will be needed.

Plans of Care Process and Delivery of HCBS:

1. All Plans of Care and related program documents currently requiring original signatures may be executed using electronic signature consent via tablet, email, or fax. Verbal consent from the participant may be used on a temporary basis during the State of Emergency. An original signature can be secured by mail or other means.
2. All HCBS participants must have a Plan of Care on file with an HCB Services or Health Home care management as an HCBS.
 - a. If an HCBS/LOC eligible child/youth has no need for an HCB Service, **and** is only eligible for Medicaid under a "**Family of One**" budget, if the child/youth receives Health Home Care Management in order to be maintained in the home, the

child/youth qualifies for the Children's Waiver. Health Home care management may be the sole service for a **"Family of One"** child/youth to continue waiver eligibility and have access to other needed Medicaid services. Review guidance here:

https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/docs/ma_elig_impact_hcbs_elig_children.pdf.

3. Health Home and C-YES care managers need to continue to collaborate with HCBS providers to obtain Frequency, Scope, and Duration to update the Plans of Care.
4. HCBS providers can provide the monthly required HCBS through telehealth mediums when clinically appropriate as outlined in previously issued guidance: https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/policy/docs/covid19_guidance_childrens_1915c_waiver.pdf.
5. Each HCBS eligible and enrolled child/youth must receive at least one monthly Waiver service, as documented in the service plan. During the State of Emergency, this monthly HCB Service requirement is waived, should the HCBS provider be unable to reach the participant/their family or if the need for services can demonstrate is less than monthly. This monthly service requirement can only be waived for two consecutive months.

HCBS providers must collaborate with the HHCM or C-YES as the participant **requires regular monthly monitoring** when an HCB Service is not provided monthly. All contacts or attempted contacts with the child/youth and family, and the method of such contact must be documented in the case record/file.

6. HCBS providers must ensure that the participant's case records identify all proper documentation, inclusive of all waived regulations, policy, and or guidance as well as if telephonic methods were utilized to meet HCBS requirements.
7. Health Home and C-YES care managers need to continue to collaborate with Medicaid Managed Care Plans (MMCP) and share the most up-to-date Plan of Care with the MMCP. During this time, the Health Home and C-YES care manager should coordinate contact and services for the Children's Waiver participant.
8. Health Home and C-YES care managers should follow the Children's Home and Community Based Services (HCBS) Plan of Care (POC) Workflow Policy (https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/docs/childrens_hcbs_poc_workflow.pdf) and complete Children's HCBS Referral Form to HCBS Provider (https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/children/docs/childrens_hcbs_referral_hcbs_provider_fillable.pdf), when new HCBS needs are identified.
9. For children/youth enrolled in a MMCP, once the referred HCBS provider has determined Frequency, Scope, and Duration for the service, the HCBS provider should

send the completed Children's HCBS Authorization and Care Manager Notification Form the MMCP as per the [Children's Home and Community Based Services \(HCBS\) Plan of Care \(POC\) Workflow Policy](#). Upon authorization of continued services, MMCPs should consider a concurrent review schedule commiserate with the Frequency, Scope and Duration requested so as to minimize the potential for service disruption due to a delay in administrative processes during the state of emergency.

10. Effective immediately, plan of care reviews and team meetings according to established timeframes are **waived**. Health Home and C-YES care managers should continue to make timely and appropriate contact with the HCBS participants, family, and involved providers to ensure the Plan of Care documentation is up-to-date and current, utilizing telephonic methods, as appropriate.

While some requirements are being adjusted or waived during this time of emergency to allow for maximum flexibility, it is the responsibility of care managers and providers to make all efforts to utilize telephonic and telehealth mechanisms to ensure regular contacts with their participants and the ongoing continuation of services to the best of their ability.

Instructions for provider personnel who are at risk of being a Person Under Investigation (PUI)

Staff are exposed to the general community each day and could become infected with an acute respiratory illness (e.g. COVID-19, influenza, respiratory syncytial virus (RSV)), if community transmission of that illness is occurring. Providers should ensure they have a policy in place to speak with staff prior to them conducting face-to-face visits with enrolled members in order to screen the staff for symptoms or contacts that might have put them at risk. It is important that providers strictly enforce their illness and sick leave policies. Staff showing symptoms of illness should not be permitted to remain at work or visit members and should not return to work until completely recovered.

Staff who have been potentially exposed to someone with confirmed COVID-19, or to someone who is a person under investigation (PUI) for COVID-19, might be placed under movement restrictions by public health officials, based on exposure risk for having contracted COVID-19 and any presenting symptoms.

If a staff person is found to be ill upon screening, the agency should send the person home and suggest that they contact their primary care physician immediately or refer them to immediate medical care, if indicated.

Where can I direct my questions about COVID-19?

Questions can be directed to the following email address: icp@health.ny.gov; or to the toll-free call center at 888-364-3065.

Your diligence in implementing appropriate measures for COVID-19 preparedness is appreciated.

Where can I direct my questions about this guidance?

Please send any questions relating to this guidance to BH.Transition@health.ny.gov

Your diligence in implementing appropriate measures for COVID-19 preparedness is appreciated.