

Unwinding of the Appendix K Flexibilities and Code Waivers

The COVID-19 pandemic was declared a federal public health emergency in January 2020. In response to the public health emergency, several policy changes were temporarily put into place throughout the declared public health emergency.

While some flexibilities were approved through the [Appendix K](#) process and Centers for Medicare and Medicaid Services blanket waivers, some required further waiver through State Executive Orders and the Indiana Health Coverage Programs.

To allow the system to prepare to transition back to pre-COVID-19 operations when the federal public health emergency expires on **May 11, 2023**, this guidance document provides the end dates of the temporary policy changes operating under different authorities.

Timelines for unwinding temporary policy changes related to COVID-19

CMS ended some of the specific emergency declaration blanket waivers as noted in the April 7, 2022, [Update to COVID-19 Emergency Declaration Blanket Waivers for Specific Providers memo](#). The memo directly affected BDDS Supervised Group Living Settings and Comprehensive rehabilitative management needs facilities or "CRMNF". The below chart outlines the ending of those blanket waivers.

May 7, 2022- ICF/IDD Blanket Waivers end (30 days from publication of memo)

<ul style="list-style-type: none">• Quality Assurance and Performance Improvement – 42 CFR §483.75(b)–(d) and (e)(3)<ul style="list-style-type: none">○ CMS modified certain requirements which require long-term care facilities to develop, implement, evaluate, and maintain an effective, comprehensive, data-driven QAPI program. This waiver gave providers the ability to focus on adverse events and infection control, and those aspects of care delivery most closely
<ul style="list-style-type: none">• Detailed Information Sharing for Discharge Planning for Long-Term Care Facilities - 42 CFR §483.21(c)(1)(viii)<ul style="list-style-type: none">○ CMS waived the discharge planning requirement which requires LTC facilities to assist residents and their representatives in selecting a post-acute care provider using data, such as standardized patient assessment data, quality measures and resource use. CMS maintained all other discharge planning requirements.
<ul style="list-style-type: none">• Clinical Records - 42 CFR §483.10(g)(2)(ii)<ul style="list-style-type: none">○ CMS modified the requirement which requires long-term care (LTC) facilities to provide a resident a copy of their records within two working days (when requested by the resident).

June 6, 2022-ICF/IDD Blanket Waivers end (60 days from publication of memo)

<p>Facility and Medical Equipment Inspection, Testing & Maintenance for ICF/IIDs – 42 CFR §§418.110(c)(2)(iv), 483.470(j), and 483.90</p> <ul style="list-style-type: none"> • CMS waived ITM requirements for facility and medical equipment to reduce disruption of patient care and potential exposure/transmission of COVID-19
<p>Life Safety Code and Health Care Facilities Code ITM for ICF/IIDs - 42 CFR §§ 418.110(d)(1)(i) and (e), 483.470(j)(1)(i) and (5)(v), and 483.90(a)(1)(i) and (b)</p> <ul style="list-style-type: none"> • CMS waived ITM required by the LSC and HCFC, with specified exceptions, which permitted facilities to adjust scheduled ITM frequencies and activities to the extent necessary
<p>Outside Windows and Doors for ICF/IIDs- 42 CFR §§418.110(d)(6), 483.470(e)(1)(i), and 483.90(a)(7)</p> <ul style="list-style-type: none"> • CMS waived the requirement to have an outside window or outside door in every sleeping room. This permitted spaces not normally used for patient care to be utilized for patient care and quarantine.
<p>Life Safety Code for ICF/IIDs - 42 CFR §§418.110(d), 483.470(j), and 483.90(a)</p> <p>CMS waived these specific LSC provisions:</p> <ul style="list-style-type: none"> • Fire Drills: Due to the inadvisability of quarterly fire drills that move and mass staff together, CMS permitted a documented orientation training program related to the current fire plan, which considered current facility conditions. • Temporary Construction: CMS waived requirements that would otherwise not permit temporary walls and barriers between patients.

Flexibilities ceased upon end date of State Public Health Emergency

Several flexibilities were approved through Executive Orders and The Indiana Health Coverage Programs. **The below chart outlines those flexibilities that ended on June 13, 2022.**

<p>All non-abuse, neglect, or exploitation (ANE) and non-COVID incidents to be reported within 48 hours. 460 IAC 6-9-5 Incident reporting</p>
<p>Updated flexibility on potential staff’s limited criminal history check to be initiated prior to hire. 460 IAC 6-10-5 Documentation of criminal histories</p>
<p>Allow potential staff to be hired by and work for an existing Medicaid/BDDS approved waiver provider to provide direct supports to participants prior to being trained. 460 IAC 6-14-4 Training</p>
<p>Allow potential staff to be hired by and work for an existing Medicaid/BDDS approved waiver provider to provide direct supports to participants prior to having a TB test. 460 IAC 6-15-2 Maintenance of personnel files</p>
<p>Allow staff to work 90 days beyond CPR/First Aid certification expiration date. 460 IAC 6-14-4 Training</p>

Flexibilities ceasing at the end of Federal Public Health Emergency

The below chart outlines those flexibilities that will end as of May 11, 2023.

ICF/IDD will no longer be reimbursed for services rendered to an unlicensed facility
HCBS Providers will no longer be able to provide services in non- HCBS settings (ICF/IID)
PAS requirements that PASRR process be complete prior to admission into a nursing facility will resume. PASRR Level II screen will no longer be allowed to be delayed up to 30 days after admission.

Flexibilities in place for up to six months after end of Federal Public Health Emergency

Certain flexibilities approved through Appendix K will remain in effect for COVID related circumstances up to six months after the Federal Public Health Emergency ends. **The Federal Public Health Emergency ends on May 11, 2023. All Appendix K flexibilities will end November 11, 2023.**

Expanded language in family paid caregiver in re-defined circumstances.
Expanded language waiving the 40 hour per week per paid caregiver limitation on family members when existing services on the individual's PCISP have been interrupted due to circumstances related to COVID.
Expanded language for RHS reimbursement for overnight staff/paid caregiver.
Allow RHS reimbursement for time when staff/paid caregiver is asleep.
Expanded language for SFC allowances.
Modify SFC visits to require at least one face to face visit.
Allow flexibility in day service ratios.
In unique and rare situations, the home of a DSP familiar to the individual may be used as a temporary/alternate waiver residential setting for a participant when the participant's primary caregiver has been diagnosed with or quarantined due to COVID-19.
If a 90-day BMR has been requested previously, additional BMRs may be requested for a period of up to 60 days.

Temporarily allow BMRs to be filed within 60 calendar days of the event or status change.

Temporarily waive the requirement for a Confirmation of Diagnosis to complete Level of Care for re-entries to waiver services.

Allow telehealth as a service delivery option *unless* authorized in [Senate Enrolled Act 3 and Senate Enrolled Act 284 and \(SEA 3 and SEA 284\)](#), and as governed by their professional licensure requirements.

*See below guidance on virtual visits

COVID-19 reporting requirements

The below chart outlines those requirements that ended on June 13, 2022

Reporting of COVID positive staff no longer required.
Reporting of provider temporary closure/re-openings due to COVID no longer required.

Guidance on the use of virtual visits for BDDS waiver services

The use of virtual visits (also known as telehealth) was temporarily approved through Executive Orders and eligible for reimbursement under the Indiana Health Coverage Programs. BDDS waiver services are a program of Medicaid therefore are bound by the rules put in place through IHCP as well as state and federal legislation.

While IHCP allowed BDDS the broad use of telehealth during the public health emergency, in April 2021, the Indiana state legislature passed [Senate Enrolled Act 3 \(SEA 3\)](#) and subsequently Senate Enrolled Act 284 (SEA 284) in 2022 which put into law the ability of the Indiana Health Coverage Programs to only provide telehealth services by defined practitioners.

Many HCBS Medicaid waiver providers who provide services on the Family Support Waiver and Community Integration and Habilitation waiver are not practitioners providers as defined in SEA 3 and SEA 284.

Following are the BDDS waiver services that may continue to be provided via telehealth as outlined in SEA 3 and SEA 284, and as governed by their professional licensure requirements:

- Occupational Therapy: the occupational therapist licensed under IC 25-23.5
- Physical Therapy: the physical therapist licensed under IC 25-27
- Speech Therapy: the speech-language pathologist or audiologist licensed under IC 25-35.6
- Psychological Therapy: the psychologist licensed under IC 25-33
- Wellness Coordination: when the nurse is licensed under IC 25-23

Case Management is not considered a “health care service” as set forth in SEA 284 (2022). BDDS has introduced some telehealth elements of this service in the CIH and FS waiver amendments that were approved with an effective date of January 1, 2022.

Please note that all other waiver providers not on the above list will no longer be allowed to provide virtual services to individuals after November 11, 2023.

Staying up to date

To stay up to date on how the Division of Disability and Rehabilitative Service and the Bureau of Developmental Disabilities Services is responding to the needs of Hoosiers with disabilities and their families visit <https://www.in.gov/fssa/ddrs/5762.htm>

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