

April 2, 2020

Via Email Only

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Stephanie Muth
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Re: 1915(c) Appendix K

Dear Executive Commissioner Wilson and Deputy Executive Commissioner Muth:

As you know, the Center for Medicare and Medicaid Services (CMS) has developed Appendix K to the section 1915(c) waiver applications for use by states during emergencies. It describes actions states can take under existing section 1915(c) waiver authority to respond to an emergency. The appendix may be approved retroactively to the date of the underlying event to ensure that states are able to make changes to its waiver operations when necessary to ensure the health and safety of waiver participants.

Disability Rights Texas is requesting that Texas seek temporary changes to its 1915(c) Home and Community-based Services (HCS) waiver to proactively address potential staffing shortages, projected access to care issues, and the need for providing services provision beyond the terms of approved service descriptions in the current HCS waiver. This is necessary to address participant health, safety and welfare for the duration of the emergency. Unless addressed, this problem could potentially impact tens of thousands of Texans with intellectual and developmental disabilities (IDD). Once a person with IDD becomes COVID-19 positive, the protocols for staying safe such as isolation and social distancing are more problematic and challenging to enforce. Further, those HCS recipients who are medically fragile/complex will require significantly more care than a COVID-19 patient without a diagnosis of IDD and comorbid medical conditions. Therefore, submitting Appendix K temporarily amending the HCS waiver program will enable the state to provide the supports and services vulnerable Texans with IDD need to remain in the community. And if temporary institutionalization is required, the additional services available

through Appendix K can provide the supports and services needed to ensure their safe return to the community.

For example, changes Texas can make to its HCS waiver in response to this emergency include the following:

- Temporarily modify service scope or coverage by completing Section A – Services to be Added/Modified During an Emergency;
- Temporarily permit payment for services provided by legally responsible individuals and others if not already permitted under the waiver;
- Temporarily modify provider qualifications so that instead of face-to-face training requirements new staff can be trained using electronic or telephonic methods;
- Temporarily modify processes for level of care evaluations or re-evaluations to allow for telehealth evaluations or re-evaluations using current telehealth guidance;
- Temporarily increase payment rates;
- Temporarily include retainer payments to pay, for example, a home health agency to provide personal care services when the individual's paid caregiver is adversely impacted by COVID-19;
- Temporarily allow the waiver recipient to exceed service limitations or to extend the amount, duration and prior authorization to address health and safety issues and that may include additional personal assistance hours, nursing hours, and necessary supports and services;
- Temporarily modify person-centered service plan development process by having telephonic or video conferencing for developing the Individual Plan of Care instead of face-to-face planning and development;
- Temporarily authorize the provision of services in out of state settings to accommodate relocation with family; and
- Temporarily add services to the waiver to address emergency situations including emergency medical supplies, and equipment and ancillary services to establish temporary residences for dislocated waiver recipients and necessary technology;
- Temporarily expand the settings where waiver services can be provided including hotels, shelters, schools and churches; and
- Temporarily permit payment for services in an acute care hospital or short-term institutional stay when necessary supports, including communication, intensive personal

care and behavioral stabilization are not available in the institutional setting and are needed to support the waiver recipient.

In sum, for Texans who rely on the HCS waiver program to provide for their health and safety, the COVID-19 pandemic poses a significant threat to their well-being. By utilizing Appendix K Texas is taking additional steps to mitigate exposure to the disease and its associated health risks. That is, providing alternative service delivery models that can be adjusted to rapidly changing circumstances, while at the same time preserving the HCS provider network and service delivery system, is the kind of flexible response the COVID-19 crisis requires. Accordingly, Texas should immediately make an Appendix K submission to CMS to amend its HCS waiver as soon as possible.

Thank you for considering this request.

Sincerely,

A handwritten signature in black ink that reads "Nathaniel Corbett". The signature is written in a cursive, slightly slanted style.

Senior Litigation Attorney

GAC/mm