

Return to Routine Medicaid Eligibility Operations: Appendix K Flexibilities Summary

Updated as of 5/26/2023

The COVID-19 Public Health Emergency (PHE) resulted in Ohio's Appendix K flexibilities being implemented in the Assisted Living, Individual Options, Level 1, Ohio Home Care, MyCare, and PASSPORT and SELF waiver programs in April 2020.

This document provides an overview of the Return to Routine Medicaid Eligibility Operations for Appendix K flexibilities implemented during the PHE. It includes information on the timeline for expiration of these flexibilities, the current and future state for key flexibilities, and resources for stakeholders interested in learning more or providing feedback.

Background

1. What is Appendix K?

As part of the federal COVID-19 public health emergency (PHE), the Ohio Department of Medicaid (ODM) made changes to its Home and Community-Based Services (HCBS) 1915(c) waivers through Appendix K flexibilities. The Centers for Medicare & Medicaid Services (CMS) developed Appendix K to help states accelerate changes to their 1915(c) waiver operations or to request emergency amendments. A [full list of the flexibilities](#) is on the ODM website. This authority has allowed states to implement some short-term flexibilities, meant to be used for emergency operations considering the impact the COVID-19 emergency has had on people enrolled in waiver programs and the services they receive. There are some flexibilities the Centers for Medicare and Medicaid Services (CMS) will not allow to continue.

2. What does the end of the COVID-19 Public Health Emergency (PHE) mean for Appendix K?

The recently passed Consolidated Appropriations Act, 2023 (CAA) and the State of Ohio's (the State) return to routine eligibility operations did not impact these HCBS Waiver Appendix K flexibilities. These flexibilities will expire six months after the PHE's end. President Biden's [announcement](#) that the PHE ends on May 11, 2023 means that **HCBS Waiver Appendix K flexibilities expire on November 11, 2023.**

3. What is the State of Ohio doing in response to the expiration of these flexibilities?

ODM, Ohio Department of Aging (ODA), and the Ohio Department of Developmental Disabilities (DODD) are assessing the State's Appendix K flexibilities to determine which allowances will continue beyond November 11, 2023, and in what capacity. Flexibilities that continue must be within the parameters of CMS requirements. CMS approval, based on the guidelines outlined in its [technical guide](#), is required for any changes. The State is working to align flexibilities as much as possible for all nursing facility (NF) and DODD waiver programs. For those flexibilities that expire on November 11, 2023, the Agencies will develop and communicate transition plans to ensure minimal impact on individuals.

4. Waiver programs are State of Ohio programs. Who is CMS and what do they have to do with the Assisted Living, Individual Options, Level 1, Ohio Home Care, MyCare, PASSPORT, and SELF waiver programs?

CMS is the Centers for Medicare and Medicaid Services. It is the federal agency responsible for all Medicare and Medicaid programs in the nation. CMS operates under the U.S. Department of Health and Human Services. All federal funding that ODM receives for the waiver programs come from this federal agency. ODM, DODD, and ODA must follow all the requirements of CMS in order to receive federal funding for programs. While each state has the authority to develop their own Home and Community Based Waiver program(s), CMS is the final authority. The role of CMS includes:

- Developing regulations for waiver programs
- Monitoring all state waiver programs
- Providing guidance and technical assistance to states

The chart below shows the authority relationship for Ohio Waiver programs:

Federal authority → State Medicaid Agency → State Operating Agencies

Figure 1. Relationship between CMS and Ohio Waiver programs



5. What is the purpose of the State’s assessment of its current flexibilities?

The State is assessing Appendix K flexibilities to identify which will continue and plan for those that will expire, according to what CMS will allow. For flexibilities that will end, the State will develop and communicate transition plans to ensure minimal impact on individuals. Throughout its assessment, the State is committed to continuing to receive and consider feedback, particularly from those with lived experiences impacted by the flexibilities. As of the date of this document’s publishing, the State has held 9 separate stakeholder webinars targeting nursing facility (NF)-based waiver case management entities, developmental disability (DD)-based waiver participants and stakeholders, and MyCare plans. The goal of the webinar series was to provide information on the State’s assessment of key flexibilities, share updates on anticipated changes to flexibilities, and solicit stakeholder feedback. As the State continues to expand on its assessment and gather input from stakeholders, it is committed to aligning flexibilities as much as possible for all NF and DODD waiver programs.

6. Why can’t all flexibilities continue once the Appendix K authority expires?

An Appendix K is an appendix to the Home and Community-Based Waiver agreement between Ohio Medicaid and CMS. As stated above, Appendix K flexibilities are used during emergency situations in which typical standing waiver provisions must be suspended or altered to support service delivery during the period of the emergency. Since the PHE ended on May 11, 2023, states must, by November

11, 2023, return to the way things were prior to the state of emergency. However, states have the opportunity to update programs with modifications that worked well and are still allowable. For example, the use of telehealth visits worked well and states have permission to continue this. Not all flexibilities remain allowable, however. For instance, similar services that were allowed to occur at the same time to assist people during this time of emergency will have to be removed, as CMS considers this a duplication of service.

7. How can I provide feedback during this process?

ODM, ODA, and DODD are committed to receiving and considering feedback throughout this process, particularly from those with lived experiences impacted by the flexibilities. The State will continue to host public-facing webinars and, in addition to webinars, stakeholders can provide feedback through public comment periods for any waiver amendments or OAC rule updates that may occur. Additional comments or questions may be submitted to AppendixKQuestions@medicaid.ohio.gov, waiverfeedback@age.ohio.gov or WaiverFeedback@dodd.ohio.gov.

Key Flexibilities

ODM, ODA, and DODD have received feedback throughout the PHE to focus on legally responsible family member provisions, shared living flexibilities, and provider deeming. These are the top flexibilities stakeholders report as being the most beneficial during the PHE and will be the primary focus of this document. ODM, ODA, and DODD have been asked to implement as much flexibility as possible for these services once Appendix K expires and will continue to take into account stakeholder feedback and concerns.

Ohio Shared Living

8. What is shared living?

Shared living is a service available to people using the Individual Options Waiver. Ohio Shared Living is often called OSL for short. It provides an option for adults with a developmental disability to get the support they need while living with a family member or a caregiver. The person resides with one or more family members or caregivers, and they provide care and support services to the individual. OSL family members and caregivers support adults with developmental disabilities in a home setting. OSL family members and caregivers are paid to provide hands-on care and supportive services. Family members and caregivers provide, or help to coordinate, the services outlined in a person's service plan. Assistance with personal care, supervision, housekeeping, and accessing community activities are all part of the OSL service.

9. What changes were made to the shared living flexibility during the PHE?

During the PHE, changes were made to **allow shared living services to be billed on the same day** as homemaker/personal care (HPC) and/or participant-directed homemaker/personal care services (PDHPC) by different direct support professionals. Although CMS prohibits "duplication of services" during normal operations of the waiver programs, the State of Ohio received approval to allow HPC to be accessed for respite needs of shared living providers.

10. What will happen to the shared living flexibility once the Appendix K authority expires?

Because HPC and PDHPC are duplicative of current shared living services, and respite care for HPC is not permissible, **CMS will not allow this flexibility to continue once Appendix K authority expires on**

November 11, 2023. The State is currently exploring potential alternative options to meet the needs expressed by stakeholders. ODM and DODD recognize the need for additional support for shared living providers and are considering changes to the existing residential respite service descriptions and rates.

For additional information on work DODD is doing outside of Appendix K expiration, please visit https://dodd.ohio.gov/about-us/waiver_redesign.

Legally Responsible Family Member Provisions

11. What legally responsible family member provisions were allowed during the PHE?

Prior to the COVID-19 PHE, there was generally not an allowance for legally responsible family members to provide services, though DODD's system did previously allow this for certain individuals. During the PHE, given CMS' Appendix K flexibilities, states had many different regulations for and implementation of legally responsible family member provisions. The State of Ohio permitted payment for direct services rendered to minor children by family caregivers or legally responsible guardians who were employed by an agency.

12. What will happen to the legally responsible family member provisions once the Appendix K authority expires?

ODM, ODA, and DODD have been looking into which components of this flexibility will continue beyond the expiration of the Appendix K authority and has drafted a proposal that is similar to what was implemented during the PHE and aligned with federal requirements and limitations. In developing this proposal, the State kept three key goals in mind:

- Granting as much flexibility as possible in order to meet the needs of individuals enrolled in the waiver programs
- Compliance with CMS requirements to maintain waiver approval
- Ensuring appropriate oversight for relatives working as direct care workers

The State continues to incorporate stakeholder feedback into consideration as it develops and refines its proposal. The OAC rule for the State's proposed legally responsible family member provision (1915(c) Medicaid waiver, home health, and private duty nursing program provider and direct service worker relationships) can be found [here](#). We hope that you are able to review and provide feedback to this draft. In summary, the proposed rule states that:

- Relatives with legal decision-making authority will be permitted to serve as a direct care worker through agency employment or provides a service paid through a fiscal management service once Appendix K expires
- Legally responsible family members (parent of minor children or spouse) will be paid only for services deemed extraordinary care, for which the state is developing an assessment tool to evaluate such care
- For a relative to act in this capacity, the service must be necessary to meet the health and welfare needs of the participant and one of the following hardship criteria:
 - Care is temporarily needed while a willing and able direct service worker/provider is sought
 - The relative has experienced a significant change in work status as a result of meeting the needs of the individual (e.g., resignation, change from full- to part-time schedule, leave of absence, etc.)

The above provision is subject to additional limitations and parameters to assure alignment with Federal guidelines.

Please be advised, legally responsible family member provisions, as implemented during the PHE, continue until November 11, 2023. After that date, the State will shift implementation of legally responsible family member provisions per its proposal.

13. What is extraordinary care?

Extraordinary care, as defined by CMS, means care exceeding the range of activities that a legally responsible individual would perform in the household on behalf of a person without a disability or chronic illness of the same age, and which are necessary to assure the health and welfare of the participant and avoid institutionalization. This includes providing assistance with activities of daily living that go above and beyond typical care of an individual, based on normal developmental expectations. Some examples of extraordinary care include:

- If a 1-year-old needs assistance bathing, this is not considered 'extraordinary'; a 15-year-old without developmental disabilities can most likely bathe themselves, but if they cannot, that would be considered extraordinary
- A parent lifting a 1-year-old is 'ordinary'; lifting a 16-year-old is 'extraordinary'
- Providing general and specialized supports such as Hoyer lift/mechanized bath chairs, indwelling catheter, medical gases, prosthetic orthotics, and suppository/bowel program

The State is working on developing an assessment to be used for determining if care needed is extraordinary. CMS also requires certain assurances from the state, which may include additional criteria. Please see the [CMS Technical Guide](#) for more information.

Provider Reciprocity (Deeming) Provisions

13. What is provider deeming?

Through Appendix K authority, ODM, DODD, and ODA have been permitted to allow waiver providers with an active Medicaid provider agreement to furnish waiver services across the delivery systems without being subject to additional provider standards and certification processes specific to the waiver programs.

14. What changes to provider deeming were made during the PHE?

During the PHE, ODM and ODA were authorized to consider any ODM, ODA, or DODD waiver service provider as having satisfied ODM or ODA requirements for same or similar services. Providers certified by ODA and DODD to provide services for Ohio Medicaid individuals are enrolled as Ohio Medicaid providers. Per this flexibility:

- DODD-certified waiver providers met the minimum standards to furnish same or similar waiver services in ODA-operated waivers and the ODM-operated waivers
- ODA-certified waiver providers met the minimum standards to furnish same or similar waiver services in the DODD-operated waivers and ODM-operated waivers
- ODM-approved waiver providers met the minimum standards to furnish the same or similar services in the DODD-operated waivers and the ODA-operated waivers

All provider types which furnish the same or similar services between delivery systems were affected by these modifications.

15. What will happen to the provider deeming flexibility once the Appendix K authority expires?

ODM, DODD, and ODA have been working together to analyze the impact of keeping this flexibility and better understand the benefits and challenges of provider deeming. The State has determined it will not proceed with implementing provider deeming as part of its Return to Routine Eligibility Operations efforts. In making this determination, the State took several considerations into account, including:

- Stakeholder feedback received during our Appendix K webinar series, specifically the public's thoughts on the requests to focus State efforts on shared living in DODD programs and general alignment on the allowance for legally responsible family members as providers
- Feedback from ODM, DODD, and ODA, focusing on Agency representatives' experiences implementing provider deeming flexibilities during the PHE

The State is currently assessing the programmatic impact of sunseting this flexibility. It is working to determine next steps for transitioning back to pre-PHE operations and is making every effort to mitigate the effect of its expiration on providers. More information will be shared as soon as it is available.

Additional Information

14. Where can I go to find more information?

- Information will be posted on the ODM Resuming Routine Medicaid Eligibility Operations webpage at <https://medicaid.ohio.gov/stakeholders-and-partners/covidunwinding/covidunwinding>.
- Additionally, you can stay informed via our stakeholder list. Please let us know if you would like to be added to AppendixKQuestions@medicaid.ohio.gov.
- Stay updated on information and news from the State at <https://medicaid.ohio.gov/stakeholders-and-partners/covidunwinding> as it becomes available.
 - Medicaid news
 - [Form | Medicaid \(ohio.gov\)](#)
 - OAC rule updates
 - ODM clearance notifications – publicly posted proposed OAC rule updates
 - Subscribe: <https://governor.ohio.gov/priorities/common-sense-initiative/enotifications>
 - Direct access to view: <https://medicaid.ohio.gov/wps/portal/gov/medicaid/about-us/notices/public-notices>
 - DODD clearance notifications – publicly posted proposed OAC rule updates: <https://dodd.ohio.gov/forms-and-rules/rules-under-development>
 - OAC rule filing activity notifications
 - Create account: <https://www.rulewatchohio.gov/authentication/create-account?1>
 - To receive notifications of chapters of interest, select from the menu of options provided
 - Register of Ohio

- View previous, current, and proposed OAC rule update activity:
<http://www.registerofohio.state.oh.us/rules/search>