

# Impact on Appendix K Flexibilities in the NC Innovations Waiver During the COVID-19 Public Health Emergency

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In March 2020, the COVID-19 public health emergency compelled NC Medicaid to implement Appendix K flexibilities to change the 1915(c) Home & Community-Based Services Waivers. This paper will examine the impact of these flexibilities and the subsequent decision to sunset them, with a focus on the Innovations Waiver.

## Introduction

States that operated 1915 (c) Home & Community-Based Services Waivers during the COVID-19 public health emergency were allowed by the Centers for Medicare & Medicaid Services (CMS) to submit an Appendix K, a standalone appendix available during emergencies, to amend existing waivers to make temporary changes to services, provider payments, eligibility, and other program and policy areas. NC Medicaid operates four 1915(c) waivers: Community Alternatives Program for Children (CAP/C) [1], Community Alternatives Program for Disabled Adults (CAP/DA) [2], Innovations [3], and Traumatic Brain Injury (TBI) [4]. 1915(c) waivers allow state to provide an array of services in the community to individuals whose needs meet institutional levels of care, such as what one would receive in an intermediate care facility for individuals with developmental disabilities or a skilled nursing facility, but who choose to receive services in the community.

In March 2020, Governor Roy Cooper's Executive Order 121 required North Carolinians to stay at home to reduce the spread of COVID-19 [5]. The order drastically changed how services were provided under the 1915(c) waivers. NC Medicaid submitted Appendix K flexibilities to help waiver beneficiaries continue to receive services in their home and community under COVID-19 conditions. The flexibilities include maintaining direct support workers through retainer payments, providing services in alternative locations, and allowing for services to be provided to members if they were hospitalized [6]. These flexibilities allowed for home-delivered meals for people enrolled in HCBS waivers who are unable to access their community, and relatives of minor children were permitted to provide services above waiver limits to ensure continuity of care and reduce regression of skill development. People enrolled in the HCBS waivers

who require additional service hours due to COVID-19 were allowed to receive hours without prior authorization and to exceed their waiver budget. This provision was intended to increase access to services without delay.

Appendix K flexibilities typically end six months after the end of a public health emergency. In September 2023, CMS issued guidance to allow states to continue the flexibilities until the approval of an amendment to make those flexibilities permanent. North Carolina submitted a waiver amendment to make many of these flexibilities permanent that has been approved to be effective March 1, 2024. The Appendix K flexibilities and the decision to make some of them permanent demonstrates North Carolina's commitment to the precedent set by the 1999 U.S. Supreme Court decision in *Olmstead v L.C.* [7]. These changes are intended to keep waiver beneficiaries in their communities and prevent institutionalization. The waiver amendment that is set to take effect on March 1, 2024, will include the continuation of home-delivered meals, allow parents to continue providing direct supports to minors and relatives to provide up to 84 hours per week of direct supports to adult waiver beneficiaries, increase the Innovations Waiver cost limit from \$135,000 to \$184,000, and continue allowance for services to be provided in alternate settings in certain circumstances [8].

## Conclusion

Appendix K provided some assurance of maintaining and increasing access to services during an unsure moment in history. Stakeholders identified many concerns, with the most pressing being access to direct support staff and the need to continue supporting relatives as care providers, which were similar to worries expressed in other states. This flexibility was utilized over the past three years to meet the needs of waiver beneficiaries, especially with regard to continuity of care and reducing their risk of skills regression.

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Public comment has provided insight into the impact of the flexibilities on preventing institutionalization. NC Medicaid is committed to fully understanding the impact of Appendix K flexibilities on individuals receiving the waiver. **NCMJ**

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