To: Board of Directors and DD State Council Executive Directors  
From: Kristin Britton, NACDD Public Policy Committee Chair  
Date: April 6, 2020

RE: State policy support for State DD Councils in responses to COVID-19.

NACDD Public Policy Committee (PPC) is a resource for State DD Councils to share effective tools and strategies for state COVID 19 response policy that meets the needs of people with intellectual and developmental disabilities. During this unprecedented national emergency, the PPC identified a need to assist councils with guidance and best practices for state advocacy.

For the past few weeks, members of the PPC met to discuss ways council policy staff can support the work of governors dealing with the COVID-19 crisis. We are moving forward with a plan to encourage all councils to engage in ongoing state activities in response to COVID-19 by providing shared resources and peer to peer networking opportunities to share best practices.

Background: By March 16, 2020, every state had declared a State of Emergency or a Public Health Emergency in response to COVID-19. These declarations unlock state aid to supplement local resources in preventing or alleviating damages, loss, hardship or suffering due to the emergency. Emergency declarations also activate emergency coordination among state agencies.

Many councils moved quickly to assist governors by identifying and filling gaps in state emergency response. Now, states are turning to Medicaid emergency waivers as a way to fill gaps in response, mitigation and recovery efforts. It is important for councils to be at the table to advise the governors when the state uses these emergency policy vehicles.

State Policy Advocacy: Communication   
 As the chief state executive, governor plays a key role in communicating with the public during an emergency, providing advice and instructions and maintaining calm and public order. Councils moved quickly to work with governors and state agencies to educate people with IDD about the public health emergency. PPC encourages all councils to think of ways to help their state effectively communicate with our communities during this crisis.

* In California the council worked with state agencies to create a “Plain Language COVID-19 Resource Guide” in English and Spanish that includes information about how the COVID response affects jobs, day programs, and Supplemental Security Income (SSI) checks, and links to additional information.
* The council in Guam made sure interpreter services were provided for the Governor’s emergency declarations that were broadcast on television.

State Policy Advocacy: Executive Orders  
Governors often use executive orders (EO) to trigger emergency powers during disasters and other situations requiring immediate attention. In addition to using an EO to declare emergencies, governors continue to issue EO’s in response to changing circumstances around COVID-19 (for example “stay-in-place" EO’s.)

The PPC encourages councils to contact their governors and advise them on how to use EOs to meet the needs of people with IDD and their families.

* In Wisconsin, the council leveraged their relationship with Governor Tony Evers to raise the [concerns](http://www.survivalcoalitionwi.org/wp-content/uploads/2020/03/Survival_COVID_EssentialWorkers_032020.pdf) of the “Survival Coalition,” a state-based disability coalition, about the critical role of direct service professionals to meet the needs of people with disabilities during the COVID crisis. Because of their advocacy, the governor [designated](https://content.govdelivery.com/attachments/WIGOV/2020/03/20/file_attachments/1406848/EO%208%20Clarification_3.20.2020.pdf) the workforce that provides in-home support and services to people with disabilities and older adults as essential personal and services, a critical designation to receive state aid.
* The Maryland council worked closely with Governor Larry Hogan’s staff to draft an [executive order](https://governor.maryland.gov/2020/04/01/governor-hogan-enacts-emergency-orders-to-expand-telehealth-upgrade-designation-of-disabilities-services-personnel/) that expanded of telehealth services and designated “disabilities services personnel as health care providers” which gives them additional state aid.

State Policy Advocacy: Emergency Medicaid Waivers  
State DD Councils are also working within government structures to advise state officials on helping expedite services through emergency Medicaid waivers. Because these waivers vary by state, DD council members and staff are uniquely qualified to provide expert and lived experience on the waiver provisions that would help them most. Many states have been approved for emergency waivers under 1135 and Section 1915 (c) waiver Appendix K (K waiver). Section 1115 COVID waiver applications were just released on March 22, so states are working on them now.

1135 Waivers

Section 1135 gives the Secretary of HHS the authority to waive or modify certain Medicare, Medicaid, and CHIP requirements to ensure that sufficient health care items and services are available to meet the needs of Medicaid enrollees in affected areas. These waivers can help support direct service providers and professionals so they can continue to provide critical services to people with intellectual and developmental disabilities. CMS issued a [blanket waiver](https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf) for several provisions related to hospitals, provider, and Medicare services already. CMS also issued [instructions](https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf) for 1135 waiver applications. [34 states](https://www.cms.gov/newsroom/press-releases/trump-administration-approves-34th-state-request-medicaid-emergency-waivers) have approved waivers, which are usually approved in a matter of days.

* The Colorado council held a stakeholder webinar with the Colorado Department of Health Care Policy and Financing to share information and provide feedback how a 1135 waiver could provide flexibility to expediate services delivered to Medicaid beneficiaries.

Section 1915 (c) waiver Appendix K (K waiver)

Most Medicaid home and community-based services (HCBS) are provided through Section 1915 (c) waivers. States can use “K waivers” to amend these waivers to respond to an emergency. For example, states can modify or expand HCBS eligibility or services, modify or suspend service planning and delivery requirements, and adopt policies to support providers. CMS posted a [sample Appendix K template for COVID-19](https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/hcbs/appendix-k/index.html) for COVID-19 waiver amendment requests. [14 states](https://www.kff.org/medicaid/issue-brief/medicaid-emergency-authority-tracker-approved-state-actions-to-address-covid-19/) have approved K waivers. Most state DD Agencies take the lead on K waivers and should be working with councils.

* The Maryland council worked with their DD Agency to recommend their K waiver to include:
  + Allowing people on the HCBS waiting list to receive waiver services and supports from licensed and certified providers if they lose access to natural caregivers throughout the state of emergency and until their caregiver is able to resume provision of natural supports.
  + Extending limits on hours and expenses to support families in need of respite services.
  + Expand the settings where each service can be provided. Day services can be provided in residential settings and private homes, for example. Ensure services can be provided in a hospital if someone is hospitalized due to COVID-19 and that providers get paid.

1115 “Demonstration” Waivers

On March 22, CMS announced that states can apply for [Section 1115](https://www.medicaid.gov/medicaid/section-1115-demonstrations/1115-application-process/index.html) COVID-19 demonstration programs to extend home and community-based services (HCBS) flexibilities—available under the Disaster Relief Appendix K for 1915(c) to beneficiaries receiving 1915(c)-like services under section 1115 demonstrations—to beneficiaries receiving long-term supports and services (LTSS) under Medicaid state plan authorities.  
  
During past emergencies, states used this waiver to expand coverage to individuals not otherwise eligible, streamline application and eligibility verification processes, temporarily suspend or delay renewals for existing enrollees, waive cost sharing and/or expand benefits for targeted population groups, and address needs for individuals within specific geographic areas of a state.

* The New Jersey council is investigating how to use 1115 in response to COVID-19.

NACDD PPC Resources and Recommendations

In addition to PPC email lists and monthly policy calls, the PPC is providing additional information and best practices for COVID state response efforts.

* NACDD PPC has set up a shared resource drive for members to upload their recommendations and best practices for waivers. This shared resource should be promoted to all state councils and staff.
* NACDD PPC members have volunteered to share effective tools and strategies for advocating for waivers at the state level. NACDD can put council staff in touch with our in-house network of experts, or staff can reach out directly to the states who upload materials in the shared drive. NACDD staff can also refer councils to national partners, such as [ANCOR](https://www.ancor.org), [NADSP](https://nadsp.org/) and [NASDDS](https://www.nasddds.org/), who are organizing around waivers in the states.

State DD councils continue to be a trusted resource for governors and state agencies as they respond to meet the needs of people with developmental disabilities in thier states. We look forward to continued collaboration between state councils to address the needs of people with IDD during this emergency.

Finally, I want to thank Rachel London (MD), Tami Jackson (WI), Lauren Pearcy (TN), Cindy Smith (CA), Leslie Sutton (OR) and Erin Prangley (NACDD) for their expertise and contribution to this report.

Helpful Links

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| NACDD Shared COVID-19 State Resources (including folders on waivers) | <https://nacddonline.sharepoint.com/:f:/g/EkzNY1aP13xGoi_vPfSAsFABtKKC69eSIkLQMOcXb_hkRg?e=DIKrRs> |
| [Real-Time Tracking of All States' Approved Emergency Waivers](http://www.kff.org/medicaid/issue-brief/medicaid-emergency-authority-tracker-approved-state-actions-to-address-covid-19/) (Kaiser Family Foundation) | <http://www.kff.org/medicaid/issue-brief/medicaid-emergency-authority-tracker-approved-state-actions-to-address-covid-19/> |
| [1135 waiver template](https://www.medicaid.gov/state-resource-center/downloads/medicaid-disaster-relief-spa-template.docx) (CMS) | <https://www.medicaid.gov/state-resource-center/downloads/medicaid-disaster-relief-spa-template.docx> |
| [1115 waiver template](https://www.medicaid.gov/medicaid/section-1115-demonstrations/1115-application-process/index.html) (CMS) | <https://www.medicaid.gov/medicaid/section-1115-demonstrations/1115-application-process/index.html> |
| [**1915(c) Appendix K Template**](https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/hcbs/appendix-k/index.html) **(CMS)** | <https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/hcbs/appendix-k/index.html> |
| “COVID-19 Changes to HCBS Using Appendix K: Approval Trends” (National Health Law Program) | [https://healthlaw.org/resource/covid-19-changes-to-hcbs-using-appendix-k-approval-trends/](https://healthlaw.org/resource/covid-19-changes-to-hcbs-using-appendix-k-approval-trend) |
| “Overview on Using Medicaid to Respond to COVID-19"  (National Health Law Program) | <https://healthlaw.org/resource/overview-on-using-medicaid-to-respond-to-covid-19/> |
| National Health Law Program COVID Resources (Webinars on Medicaid waivers and lots more) | <https://healthlaw.org/coronavirus-resources/> |