

## Public Health Emergency (PHE) Flexibilities Unwinding

Public Health Emergency (PHE) Flexibility Provisions - Unwinding				
Issue Date	Sunset/End Date	Authority(s)	Active PHE Flexibility	Policy Summary
4/17/2020  Revised Date: 9/2/2020	11/11/2023	Appendix K	Interim COVID-19 Guidance Regarding Community Habilitation Revised: "Interim COVID-19 Guidance Regarding Community Habilitation Services"  <a href="https://opwdd.ny.gov/system/files/documents/2020/09/9.3.2020-revised-covid-19-community-habilitation-services-guidance.pdf">https://opwdd.ny.gov/system/files/documents/2020/09/9.3.2020-revised-covid-19-community-habilitation-services-guidance.pdf</a>	<b>PHE Guidance:</b> Community Habilitation may be temporarily provided remotely via telehealth without prior approval. May be provided in certified residences in certain circumstances and out-of-state. Applies to self-directed Community Habilitation as well.  <b>Post PHE Guidance:</b> Remote provision of Community Habilitation Services is allowed subject to ADM 2021-03 ( <a href="https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs">https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs</a> .) In-residence Community Habilitation guidance will be replaced with <i>Requirements for Community Habilitation-Residential (CH-R) services delivered in the Individual's Certified Residence</i> 21-ADM-02 at the end of the PHE.
4/24/2020  Revised Date: 9/3/2020 5/17/2021	11/11/2023	Appendix K	Interim COVID-19 Guidance Regarding Prevocational Services Revised: "Interim COVID-19 Guidance Regarding Prevocational Services"  <a href="https://opwdd.ny.gov/system/files/documents/2020/09/9.3.2020-revised-covid-19-prevocational-services-guidance.pdf">https://opwdd.ny.gov/system/files/documents/2020/09/9.3.2020-revised-covid-19-prevocational-services-guidance.pdf</a>	<b>PHE Guidance:</b> Prevocational Services may temporarily be provided remotely using telehealth, and does not require prior approval. Allows Prevocational Services in the person's private home; the person's family home; a provider owned or controlled certified or uncertified residential setting; or any other emergency residential setting, such as a hotel. Prevocational Services may be provided in out-of-state locations. However, Staff must know how to safely serve the person, Staff Action Plans can be updated at a later date (described in the OPWDD Interim Guidance Regarding Care Planning Activities).  <b>Post PHE Guidance:</b> Remote provision of Prevocational Services is allowed subject to ADM 2021-03 ( <a href="https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs">https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs</a> .) In-residence delivery of Prevocational services will end on 11/11/23. Thereafter, individuals wishing to continue with in-residence day services can receive In-residence CH-R in accordance with: Requirements for Community Habilitation-Residential (CH-R) services delivered in the Individual's Certified Residence 21-ADM-02.
4/24/2020  Revised Date: 9/3/2020 5/17/2021	11/11/2023	Appendix K	Interim COVID-19 Guidance Regarding Day Habilitation  <a href="https://opwdd.ny.gov/system/files/documents/2020/09/9.3.2020-revised-covid-19-day-habilitation-guidance.pdf">https://opwdd.ny.gov/system/files/documents/2020/09/9.3.2020-revised-covid-19-day-habilitation-guidance.pdf</a>	<b>PHE Guidance:</b> Day Habilitation services may temporarily be provided remotely using telehealth, and does not require prior approval. Allows Day Habilitation services in the person's private home; the person's family home; a provider owned or controlled certified or uncertified residential setting; or any other emergency residential setting, such as a hotel. Day Habilitation may be provided in out-of-state locations, if necessary, for the safety of the person. Day Habilitation providers may provide and bill Medicaid for services that support the person. Staff must know how to safely serve the person however, Staff Action Plans can be updated at a later date (described in the OPWDD Interim Guidance Regarding Care Planning Activities).  <b>Post PHE Guidance:</b> Remote provision of Day Habilitation Services is allowed Subject to ADM 2021-03 ( <a href="https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs">https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs</a> .) Day Habilitation services is guided by ADM 2006-01 In-residence delivery of Day Habilitation services will end on 11/11/23. Thereafter, individuals wishing to continue with in-residence day services can receive In-residence CH-R in accordance with: Requirements for Community Habilitation-Residential (CH-R) services delivered in the Individual's Certified Residence 21-ADM-02.
9/3/2020	11/11/2023	Appendix K	Interim COVID-19 Guidance Regarding Pathway to Employment  <a href="https://opwdd.ny.gov/system/files/documents/2020/09/9.3.2020-pte-delivery-guidance.pdf">https://opwdd.ny.gov/system/files/documents/2020/09/9.3.2020-pte-delivery-guidance.pdf</a>	<b>PHE Guidance:</b> Pathway to Employment services may temporarily be provided remotely via telehealth and without prior approval. Pathway to Employment services may be provided in out-of-state locations, if necessary, for the safety of the person. Services provided in another state must be provided in accordance with the waiver service definition and the person's Life Plan. The Life Plan may be amended to address service needs throughout the state of emergency.  <b>Post PHE Guidance:</b> Remote provision of Pathway to Employment Services is allowed subject to ADM 2021-03 ( <a href="https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs">https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs</a> .) Pathway to Employment services are guided by ADM 2015-01.

9/3/2020	11/11/2023	Appendix K	Interim COVID-19 Guidance Regarding Respite  <a href="https://opwdd.ny.gov/system/files/documents/2020/09/9_3_2020-respite-delivery-guidance.pdf">https://opwdd.ny.gov/system/files/documents/2020/09/9_3_2020-respite-delivery-guidance.pdf</a>	<p><b>PHE Guidance:</b> Respite services may temporarily be provided remotely using telehealth and without prior approval. The delivery of Respite services via telephonic transmission is not permissible. The service definition and limits for Respite services are temporarily modified to allow people who live in a certified residence (Individualized Residential Alternative, Community Residence or Family Care Home) to receive Respite services in the residence if several conditions are met. The schedule for service delivery for children and young adults who attend school in-person must be outside of regular school hours.</p> <p><b>Post PHE Guidance:</b> Remote provision of Respite Services is allowed subject to ADM 2021-03 (<a href="https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs">https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs</a>.) Respite services including the ability to temporarily provide respite services to individuals living in a certified residence (Individualized Residential Alternative, Community Residence or Family Care Home) will end. Respite services are guided by ADM 2017-01R.</p>
9/3/2020	11/11/2023	Appendix K	Interim COVID-19 Guidance Regarding Supported Employment  <a href="https://opwdd.ny.gov/system/files/documents/2020/09/9_3_2020-semp-delivery-guidance.pdf">https://opwdd.ny.gov/system/files/documents/2020/09/9_3_2020-semp-delivery-guidance.pdf</a>	<p><b>PHE Guidance:</b> Supported Employment services may temporarily be provided remotely via telehealth and without prior approval. Services provided in another state must be provided in accordance with the waiver service definition and the person's Life Plan. The Life Plan may be amended to address service needs throughout the state of emergency.</p> <p><b>Post PHE Guidance:</b> Remote provision of Supported Employment Services is allowed subject to ADM 2021-03 (<a href="https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs">https://opwdd.ny.gov/adm2021-03-ability-use-technology-remotely-deliver-home-and-community-based-services-hcbs</a>.) Supported Employment services are guided by ADM 2016-01.</p>
3/7/2020	6/6/2023	Appendix K	Occupancy Flexibilities	<p><b>PHE Guidance:</b> Providers have the ability to temporarily increase occupancy beyond 14 individuals in OPWDD certified, operated, and/or funded HCBS residential habilitation programs.</p> <p><b>Post PHE Guidance:</b> Return to normal operations on June 6, 2023, the end of the emergency regulations.</p>
4/17/2020  Revised Date: 9/18/2020	11/11/2023	Appendix K 1135 Waiver	Interim Guidance Regarding Care Planning Activities  <a href="https://opwdd.ny.gov/system/files/documents/2020/09/9_18_2020-revised-interim-care-planning-guidance_0.pdf">https://opwdd.ny.gov/system/files/documents/2020/09/9_18_2020-revised-interim-care-planning-guidance_0.pdf</a>	<p><b>PHE Guidance:</b> Refers to DOH Health Home guidance for in-person meetings (also applies to Basic HCBS Plan Support). Services may be initiated while awaiting signatures. Documentation of verbal or e-mail approval of the proposed changes and additions to Life Plans will suffice as authorization for providers to deliver the services. Life Plan service and support changes prompted by the COVID-19 state of emergency, including changes to the amount, duration, and scope of any service, must be updated in the Life Plan as soon as possible, but not later than sixty (60) days after the initiation of the service or change. Signatures must be obtained to finalize these changes to the Life Plan. The requirement that at least one (1) In-person Life Plan meeting is conducted each year, is waived during the period of the state of emergency. Service authorizations do not require a completed or in-process Life Plan, documentation utilized during the eligibility or LCED processes can be utilized instead. Electronic signatures may be utilized for service authorizations or amendments. Since individuals' (family/representative) signatures are not required on the service authorization request or amendment, notation of verbal agreement on the individual/family/representative signature line is acceptable. Under Appendix K authority, annual LCEDs can be deferred for 6 months from the original due date during the state of the emergency. Under 1135 authority annual LCEDs can be deferred for 12 months. Guidance regarding Medicaid extensions and Care Manager activities related to CAS assessments notated.</p> <p><b>Post PHE Guidance:</b> Annual in-person meeting and assessments must begin taking place at the end of the PHE. Post COVID Care Planning Guidance will be forthcoming.</p>
4/17/2020	Under Review	Appendix K 1135 Waiver	Deferral of Staff Action plan updates	<p><b>PHE Guidance:</b> Timeframes for finalization of non-COVID-19 related Life Plan changes that were in-process prior to March 7, 2020, or which result from any Life Plan meetings or reviews held during the emergency, are waived until after cessation of the state of emergency. The corresponding changes to Staff Action Plans can similarly be deferred.</p> <p><b>Post PHE Guidance:</b> Staff action plans should be updated within 6 months from the end of the PHE for Covid-19 Related changes (if reflected in the Life Plan or Life Plan Addendum) or 60 days from the end of the PHE for non-Covid-19 related changes and return to reviewing Staff Action Plans twice annually.</p>

9/23/2020	11/11/2023	Appendix K 1135 Waiver	COVID-19 Program Flexibilities - Supervised Individual Residential Alternative (IRA) Residential Habilitation, Day Habilitation, Community Habilitation, Site-Based Prevocational Services Providers and Community Based Prevocational Services Providers  <a href="https://opwdd.ny.gov/system/files/documents/2021/04/covid-19-program-flexibilities-master-3.25.21.pdf">https://opwdd.ny.gov/system/files/documents/2021/04/covid-19-program-flexibilities-master-3.25.21.pdf</a>	<b>PHE Guidance:</b> Chart regarding provisions that sunset or extend beyond October 14, 2020.  <b>Post PHE Guidance :</b> See appropriate ADM for each particular service. <a href="https://opwdd.ny.gov/regulations-guidance">https://opwdd.ny.gov/regulations-guidance</a> .
3/7/2020	11/11/2023	Appendix K	Retainer payments, including those made by a Fiscal Intermediary (FI) to retain 'self-hired' staff	<b>PHE Guidance:</b> Retainer payments including those made by a Fiscal Intermediary (FI) to retain 'self-hired' staff who are unable to work because the individual receiving services' or his/her family member's illness for Community Habilitation services and other services that include personal care as a service component.  <b>Post PHE Guidance:</b> Retainer payments will end on November 11, 2023.
3/25/2020	Continuing Post PHE	1135 Waiver	Article 16 Clinic Management of Coronavirus  <a href="https://opwdd.ny.gov/coronavirus-guidance">https://opwdd.ny.gov/coronavirus-guidance</a>	<b>PHE Guidance:</b> Article 16 clinic general direction; actions to take now to prepare for an outbreak of COVID-19; instructions for individuals scheduling appointments; and information regarding interactions with individuals upon arrival and during the clinic visit.  <b>Post PHE Guidance:</b> The Article-16 Clinics must continue to follow the "Revised Protocols for the Implementation of Isolation and Quarantine of Individuals in OPWDD Certified Facilities Following COVID-19 Infection."
3/1/2020	5/11/2023	1135 Waiver	Article 16 Clinic Facility Requirement and use of Telehealth  <a href="https://opwdd.ny.gov/system/files/documents/2021/07/7.2.21-interim-guidance-regarding-use-of-telehealth-covid-19_revised.pdf">https://opwdd.ny.gov/system/files/documents/2021/07/7.2.21-interim-guidance-regarding-use-of-telehealth-covid-19_revised.pdf</a>	<b>PHE Guidance:</b> Clinic facility requirement – Clinic practitioners location is designated as part of facility so that services may be provided via telehealth when neither patient nor practitioner are present at the clinic.  <b>Post PHE Guidance:</b> Return to normal operations at the end of the PHE. Article16 Clinic Rehabilitation services must be delivered in-person at the clinic site unless a different allowance is identified in the Article 16 Clinic Crosswalk. <a href="https://opwdd.ny.gov/providers/article-16-clinics">https://opwdd.ny.gov/providers/article-16-clinics</a> Article 16 Clinic services that are medical in nature should follow the guidance for Article 28 Clinics, available on NYS DOH's APG webpage: <a href="http://www.health.ny.gov/health_care/medicaid/rates/apg/">http://www.health.ny.gov/health_care/medicaid/rates/apg/</a> . . Furthermore, the provision of Article 16 services that are medical in nature will be governed by the standards announced in the 2023 NYS DOH Medicaid Update available here: <a href="https://www.health.ny.gov/health_care/medicaid/program/update/2023/docs/mu_no3_feb23_speced_pr.pdf">https://www.health.ny.gov/health_care/medicaid/program/update/2023/docs/mu_no3_feb23_speced_pr.pdf</a> .
4/10/2020	Continuing Post PHE	1135 Waiver	Guidance for the Management of Intravenous Therapy in Residential Residences  <a href="https://opwdd.ny.gov/system/files/documents/2020/04/opwdd_covid19_lpn-rn-ivtherapy_4.10.2020.pdf">https://opwdd.ny.gov/system/files/documents/2020/04/opwdd_covid19_lpn-rn-ivtherapy_4.10.2020.pdf</a>	<b>PHE Guidance:</b> A discussion of the responsibilities of the RN's and LPN's regarding intravenous therapy and procedures including alternative means of training (e.g., using video conferences).  <b>Post PHE Guidance:</b> The Guidance for the Management of Intravenous Therapy in Residential Residences will continue post PHE. COVID-guidance remains in place until updated Management of Intravenous therapy in Residential Residences is issued.
4/10/2020	Continuing Post PHE	1135 Waiver	Performing Nursing Services and Duties Remotely in Residential Settings During the COVID-19 Public Health Emergency  <a href="https://opwdd.ny.gov/system/files/documents/2021/12/revised-mbb-edits-remote-nursing-adm-2020-adm-03-r-final-12.7.21.pdf">https://opwdd.ny.gov/system/files/documents/2021/12/revised-mbb-edits-remote-nursing-adm-2020-adm-03-r-final-12.7.21.pdf</a>	<b>PHE Guidance:</b> Some nursing duties may temporarily be delivered remotely when it is appropriate and safe to do so. Guidance includes examples. Registered Nurses are responsible for staffing, medication inventory, nursing assessments, these may be done via telehealth, but training, assessment of wounds and injuries are not allowed via telehealth.  <b>Post PHE Guidance:</b> The ability for Nursing Services and Duties to be performed remotely will continue Post PHE. The Guidance for Performing Nursing Services and Duties Remotely in Residential Settings During the Covid-19 Public Health Emergency will remain in effect until updated.

3/7/2020	11/11/2023	Appendix K	On-site investigations of minor notable occurrences may be delayed by HCBS providers.	<p><b>PHE Guidance:</b> On-site investigations of minor notable occurrences may be delayed by HCBS providers.</p> <p><b>Post PHE Guidance:</b> Return to normal operations at the end of the PHE. Guidance is here: <a href="https://opwdd.ny.gov/system/files/documents/2023/02/final-part-624-handbook-updated-with-memo-2_16_23.pdf">https://opwdd.ny.gov/system/files/documents/2023/02/final-part-624-handbook-updated-with-memo-2_16_23.pdf</a>.</p>
9/9/2020	5/11/2023	1135 Waiver	Due Process and Inappropriate Discharge from Residential Programs and Services <a href="https://content.govdelivery.com/attachments/NYOPWDD/2020/09/10/file_attachments/1541723/Inappropriate%20Discharge%20Memo%20Update_9.8.pdf">https://content.govdelivery.com/attachments/NYOPWDD/2020/09/10/file_attachments/1541723/Inappropriate%20Discharge%20Memo%20Update_9.8.pdf</a>	<p><b>PHE Guidance:</b> Individuals receiving services certified or operated by OPWDD, must be afforded due process. These rights apply whenever a provider proposes to modify the provision of services, to discharge an individual from their residential or nonresidential facility, program or service, to reduce, suspend or terminate an HCBS waiver service, and/or to initiate changes to an individualized service plan including Life Plans. Regardless of the purported reason, a provider's refusal to allow an individual to return to his or her residence or other service program is considered a discharge.</p> <p><b>Post PHE Guidance:</b> Return to normal operations at the end of the PHE outlined in 14 NYCRR 633.12 and the corresponding OPWDD Community Placement Procedures.</p>
3/1/2020	5/11/2023	1135 Waiver	Fair Hearing and Appeal Timelines	<p><b>PHE Guidance:</b> Fair Hearing and Appeal Timelines. Allows delay in scheduling of Fair Hearings. Approval to issue Fair Hearing decisions beyond 90 days. Extends the timeframe in which a person can request a Fair Hearing from 90 days to 120 days.</p> <p><b>Post PHE Guidance:</b> Return to normal operations at the end of the PHE. Hearings must be scheduled within 90 days. Timeframe in which a person can request a fair hearing returns to 90 days.</p>
3/1/2020	5/11/2023	1135 Waiver	Suspend PASRR	<p><b>PHE Guidance:</b> Suspend Preadmission Screening and Resident Review (PASRR) assessments for 30 days (after review as soon as resources permit). Note OPWDD continued to complete all PASRR Level II Evaluations as received and continued monitoring for any incomplete reviews.</p> <p><b>Post PHE Guidance:</b> Return to normal operations at the end of the PHE. Guidance can be found here: <a href="https://www.health.ny.gov/professionals/nursing_home_administrator/dal/2018-11-13_da_nh_18-06_screen_pasarr_guidance.htm">https://www.health.ny.gov/professionals/nursing_home_administrator/dal/2018-11-13_da_nh_18-06_screen_pasarr_guidance.htm</a>.</p>
3/18/2020 Revised 5/17/2021	5/11/2023	Emergency State Plan Amendment (SPA)	Interim Billing Guidance Regarding Intermediate Care Facility Supplemental Payments Effective March 18, 2020 <a href="https://opwdd.ny.gov/system/files/documents/2021/05/emergency-mgt-covid19-icf-iid-supplemental-payment-letter-5-17-21_kmv_protected.pdf">https://opwdd.ny.gov/system/files/documents/2021/05/emergency-mgt-covid19-icf-iid-supplemental-payment-letter-5-17-21_kmv_protected.pdf</a>	<p><b>PHE Guidance:</b> Provided supplemental payment to fund the provision of ICF/IID active treatment during daytime, weekday service hours in accordance with each individual's authorized levels of day services provided outside of the ICF/IID prior to the Public Health Emergency.</p> <p><b>Post PHE Guidance:</b> The ICF/IID active treatment services will continue to be delivered in accordance with 42 CFR § 440.150 and with the individual's Comprehensive Functional Assessment (CFA) as defined in 42 CFR 483.440(c)(3).</p>
3/24/2020 Revised Date: 6/24/2021	6/30/2022	Appendix K 1135 Waiver	COVID-19 Refresher Training & Recertification <a href="https://opwdd.ny.gov/system/files/documents/2021/07/6.24.21-covid-19-refresher-and-annual-training-guidance_final.pdf">https://opwdd.ny.gov/system/files/documents/2021/07/6.24.21-covid-19-refresher-and-annual-training-guidance_final.pdf</a>	<p><b>Guidance Effective June 24, 2021:</b> All Refresher/Annual training due one year from original issuance date (March 30, 2021). Staff hired during the Covid-19 Public Health Emergency who have received tuberculosis screening, in lieu of test, should receive the full PPD testing within one year of their hire date or 90 days from the date of this memo (March 30, 2021). Annual Medication Administration Certification for direct support professionals must resume immediately. Delayed recertification and annual training should be completed as soon as practicable but no later than nine months from the date of this memo. (March 30, 2021).</p> <p><b>Post-PHE Guidance:</b> Flexibilities allowing providers of OPWDD certified, operated, and/or funded HCBS programs to provide abbreviated trainings and defer annual certifications will end. Accordingly, all providers who used these flexibilities must create and maintain a plan demonstrating how they will become compliant with OPWDD's training requirements by June 30, 2023.</p>

Issue Date	Sunset/End Date	Authority(s)	Expired Flexibilities	Policy Summary
3/14/2020  Revised date: 5/17/2021	11/11/2023	Appendix K	COVID-19: Revised Interim Visitation Guidance for Certified Residential Facilities  <a href="https://opwdd.ny.gov/coronavirus-guidance">https://opwdd.ny.gov/coronavirus-guidance</a>	<p><b>PHE Guidance:</b> All facilities shall allow visitation under this guidance unless otherwise prohibited by directive of OPWDD or the NYS DOH or local department of health. Visitation will be suspended if an individual is quarantined or in isolation.</p> <p><b>Guidance Effective June 25, 2021:</b> Providers may operate programs at full capacity to extent possible, to resume unrestricted visitation at and community outings from residential facilities, and to remove capacity limitations during transportation if all individuals are vaccinated.</p>