



## UPDATED: Guidance for 1915(c) Children's Waiver Home and Community Based Services Regarding Respite Services

April 8, 2020 (UPDATED June 26, 2020) (UPDATED June 25, 2021)

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The New York State Department of Health (NYSDOH) is providing this guidance to designated Home and Community Based Services (HCBS) providers serving children/youth under the Children's Waiver. The COVID-19 disaster emergency declared by the Governor under Executive Order 202 expired on June 24, 2021.

The HCBS flexibilities outlined in this guidance document due to the COVID-19 Public Health Emergency will continue to be in effect *no later than six months after the expiration of the federally declared Public Health Emergency* as outlined in Appendix K approved by the Centers of Medicare and Medicaid Services (CMS), or when the Department issues updated guidance, whichever is sooner. It is anticipated that providers will have at least 30 days' notice prior to the termination of these flexibilities.

HCBS providers should begin to plan for the expiration of the Appendix K and subsequent exceptions by ensuring they are prepared to provide HCBS according to regulations and the [HCBS Manual](#).

**Approved Update:** Respite services may continue to be provided to an individual or group for services not requiring hands on assistance through telehealth methods in compliance with HIPAA when clinically justified and when meeting the Plan of Care identified needs and desired outcomes (e.g., when the delivery of services can be effectuated via verbal prompting/cueing). Additionally, respite can be provided telephonically only when meeting all of the above and when the provider/family does not have the appropriate technological equipment to provide the service through telehealth.

This approved change through the Appendix K is retroactive, therefore any telephonic Respite services provided as outlined in the guidance and properly documented in the case record, can be billed during the emergency period beginning March 7, 2020. Please follow proper billing processes for adjustments or for claims more than 90 days after the date of service as outlined in the [HCBS & CFTSS Timely Claim Filing Guidance](#).

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As outlined in the [Guidance for Home and Community Based Service \(HCBS\) Providers Serving Children/Youth Under the 1915\(c\) Children's Waiver Related to COVID-19](#), if a waiver participant chooses not to have a face-to-face meeting or a determination is made that a face-to-face meeting is not appropriate during the COVID-19 public health emergency, the Respite provider may deliver the service remotely following telehealth guidance.

The activities must meet the definition of Respite per the [Children's HCBS Manual](#) and be clinically appropriate to meet the need of the child/youth. Respite services are permitted to be delivered via telehealth when a provider, exercising good clinical judgment, determines a telehealth encounter is appropriate for the delivery of services to an individual and the health and safety of the individual continues to be met via this service modality. Telehealth services may only be used when the delivery of services can be effectuated via verbal prompting/cueing.

Examples of approved technology methods include two-way, audio-visual technology such as FaceTime, Facebook Messenger, Google Hangout, Zoom, Loom, WebEx, or Skype. However, Facebook live, Twitch, TikTok, and similar video communication applications that are public facing should **not** be used. Telephonic-only capabilities may be used for Respite care **only when meeting the above criteria and the provider/family does not have the appropriate technological equipment to provide the service through telehealth.**

Examples of allowable telehealth Respite activities include online educational or recreational activities, such as tutorials, educational classes, exercise classes, live performances, interactive games and activities.

Providers should only bill for time spent actively delivering the service and time spent with the child/youth remotely or online. Providers may bill for time spent assisting the child/youth/family with set-up of equipment and/or activity, demonstrating the equipment and/or activity and for time spent actively engaging in the activity with the child/youth. Providers may not bill for any unsupervised time the child/youth spends in the activity.

For example: a provider spends 30 minutes engaging with the child/youth to set-up a recreational/educational activity and actively engaging in that activity with the child/youth. The provider then lets the child/youth continue the activity on their own for an hour, while the provider performs other activities. After an hour, the provider checks-in with the child for 15 minutes. The provider would be able to bill for the 45 minutes spent actively delivering the service.

**Respite may not be billed simultaneously in both an institutional and HCBS setting.**

Please utilize and reference all COVID-19 and Telehealth (telephonic) guidance available at [https://health.ny.gov/health\\_care/medicaid/covid19/index.htm](https://health.ny.gov/health_care/medicaid/covid19/index.htm). Please send questions to [BH.Transition@health.ny.gov](mailto:BH.Transition@health.ny.gov).