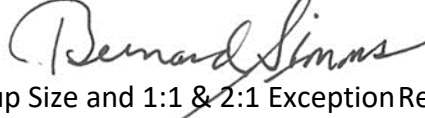




## MEMORANDUM

**To:** DDA Stakeholders  
**From:** Bernard Simons, Deputy Secretary   
**Re:** DDA Appendix K #10- Exceed Group Size and 1:1 & 2:1 Exception Request  
**Release Date:** November 4, 2021\* (revised)  
**Release Date:** April 29, 2020 (original)  
**Effective:** March 13, 2020

*\*All text in red indicates added/revised language since the prior release date*

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**NOTE: Please inform appropriate staff members of the contents of this memorandum.**

### BACKGROUND

On March 5, 2020, Governor Lawrence J. Hogan, Jr., declared a state of emergency due to disease (“COVID-19”) caused by the novel coronavirus. The COVID-19 outbreak was declared a national emergency on March 13, 2020 and was previously declared a nationwide public health emergency on January 31, 2020 (retroactive to January 27, 2020). **On July 1, 2021, Governor Hogan announced the end of the COVID-19 state of emergency in the State of Maryland.**

The purpose of this guidance is to inform Developmental Disabilities Administration (DDA) stakeholders of temporary changes to the DDA’s Home and Community-Based Services (HCBS) Waiver programs (i.e. Community Pathways Waiver, Community Supports Waiver, and Family Supports Waiver) and State funded services and operations in response to health and safety concerns related to the COVID-19 pandemic.

This guidance implements temporary modifications to DDA’s Waiver programs in Appendix K, submitted to and approved by the Centers for Medicare and Medicaid Services, and DDA State Funded services to address the state of emergency.

**This guidance was updated to reflect the unwinding of the temporary modifications to the DDA’s operated programs with the goal of reopening and best supporting people in their communities.**

### OVERVIEW

The participant to staff ratio outlined in the participant’s person-centered plan (e.g., 1:1 or 2:1) or required group size set forth in a Waiver program service definition (e.g., Community Development Services typically serves up to four (4) people) may be exceeded due to staffing shortages. DDA continues to encourage teams to use person-centered thinking skills to discuss each participant’s

risk factors and ways to mitigate those risks including what technology, environmental, and staff supports will be provided to mitigate those risk(s) during specific activities and situations. The emphasis and conversation must be around why the supports are being provided; not the number of hours and people, but the reason why staff are there.

This guidance applies to the traditional service delivery models for service noted below.

Meaningful Day Services		Residential Services		Support Services (CCS and Waiver Supports)			
	Employment Services	X	Community Living – Group Home		Assistive Tech & Services		Nurse Health Case Management
	Supported Employment	X	Supported Living		Behavioral Support Services		Nurse CM & Delegation Svs
	Employment Discovery & Customization	X	Shared Living		Coordination of Community Services		Participant Ed, Training & Advocacy
	Career Exploration				Environmental Assessment		Personal Supports
X	Community Development Svs				Environmental Modification		Respite Services
X	Day Habilitation				Family & Peer Mentoring Supports		Remote Support Services
					Family Caregiver Training & Empowerment		Support Broker
					Housing Support		Transportation Svs
					Ind & Family Directed Goods and Services		Vehicle Mods
					Nurse Consultation		

## Unwinding Appendix K and Executive Orders Flexibilities

### Standards and Requirements:

- 1) Appendix K related flexibilities for exceeding group size and 1 to 1 and 2 to 1 exception requests will **end on December 31, 2021**.
- 2) Participants and their teams shall assess current staffing needs (*i.e.*, 1 to 1 and 2 to 1) through the person-centered planning process and submit a Revised PCP as per current practice.
- 3) LTSS *Maryland* Person-Centered Plan (PCP) updates to the Appendix K related authorization for exceeding group size and 1 to 1 and 2 to 1 exception, shall be made during the next Revised PCP or Annual PCP whichever occurs first and noted in the Risks Section.
- 4) As per current practice, urgent service needs should be reported directly to the DDA Regional Office.
- 5) Service Utilization and Audits
  - a) The State may conduct:
    - i) Service utilization reviews; and
    - ii) Audits.
  - b) CMS stated its intent to audit Appendix K expenditures.

## Appendix K and Executive Orders Flexibilities

### Standards and Requirements:

1. Providers must ensure that 1:1 and 2:1 supports are provided unless otherwise authorized by the DDA Regional Office through an exception process documented below.
2. Providers must immediately call the DDA Regional Office when they are unable to provide any staffing to support health and safety.
3. Providers must submit an incident report into PCIS2 when 1:1 or 2:1 service requirements were not met and an exception was not authorized by the DDA.
  - a. For these types of incidents, one incident report can be submitted for a 24-hour period.
  - b. Providers must also file incident reports as per DDA's Policy on Reportable Incidents and Investigations for all other incident types (*e.g.*, injury, death, etc.)
4. Providers should maintain documents and correspondence and other records demonstrating:
  - a. Inability to meet required staffing ratios; and
  - b. What actions were taken to mitigate staffing shortage and maintain evidence for why actions were taken.

Example: Provider A's provider-employed direct support professionals are unable to report to work due to COVID-19-related reasons. Provider A attempts to secure temporary staff from multiple staffing agencies, but each agency reports that they too are experiencing staff shortages. As a result, Provider A is out of compliance with required staffing ratios. Provider A should retain copies of correspondence with each of the staffing agencies contacted to demonstrate that all possible efforts were made to secure enough staff.

**Process:**

1. Providers shall assess needs of participants being supported at each site to identify the maximum staffing ratio to safely support people in the home.
2. Provider that wishes to request authorization to exceed 1:1 and 2:1 staffing supports must:
  - a. Complete the DDA COVID-19 Staff Ratio Exception Request form (DDACoVIDForm#3).
  - b. Send secure email to the DDA Regional Office dedicated email account noted below with the attestation that staffing ratio exception will support health and safety needs of participants affected:

CMRO.COVID@maryland.gov	SMRO.COVID@maryland.gov
ESRO.COVID@maryland.gov	WMRO.COVID@maryland.gov

- c. The email subject line shall read: *(Insert Provide Name) - COVID-19 Staff Ratio (insert date)*.
  3. DDA shall:
    - a. Acknowledge receipt of email from the providers with the following message: *"The DDA acknowledges receipt of this email."*;
    - b. Seek additional information as needed to assess ability to support health and safety with new ratio;
    - c. Authorize or deny staff ratio exceptions based on determination;
    - d. Send signed DDA COVID-19 Staff Ratio Exception Request form determination to provider;
    - e. Log information into COVID-19 tracking sheet under the DDA Site/Ratio Tracking tab;
      - i. Enter date email received, Region, and provider name in corresponding rows A to
      - ii. Copy from the provider form data from rows A through D and paste in rows D through G in the DDA tracking sheet.
      - iii. Copy from the provider form data from rows E and F and paste in rows O and P in the DDA tracking sheet.
      - iv. Enter RO Director's decision (i.e. Approved, Denied) and decision date.
    - f. Upload the DDA COVID-19 Staff Ratio Exception Request form into the participant's LTSSMaryland ClientAttachments.
      - i. The form should be saved and uploaded in this standardized format - COVID-19 Staff Ratio Exception.FIRST LAST.DATE.
      - ii. For example, COVID-19 Staff RatioException.JohnSmith.5-1-2020;
    - g. Send the following email to the participant's Coordinator of Community Services (CCS) and copy OHCQ:
      - i. The email subject line shall read: *(Insert Participant's LTSS ID#) - COVID-19 Service Ratio- (insert date)*
      - ii. Message: *Please see attached authorization form;* and
      - iii. Attach the DDA COVID-19 Staff Ratio Exception Request form.
4. CCS shall confirm staff ratio continues to meet a person's health and safety needs during monthly contact and inform DDA Regional Office of any discrepancies and concerns.
5. Providers shall:

- a. Document staffing ratios in case notes; and
- b. Submit incident reports based on standards listed above.

**Billing Process:**

Providers will continue to bill and receive the same reimbursement rate for 1:1/2:1 staffing based on participant's person-centered plan prior to the COVID-19 crisis regardless of the staffing ratio exception approval unless otherwise determined by the DDA.

**Applicable Resources:**

[DDA Waivers - Appendix K Webpage Memo—](#)

[Appendix K Flexibilities Update – August 13, 2021](#)