

Relaxing Staffing Requirements in Limited Circumstances in Response to COVID-19 April 1, 2020

On January 30, 2020, [DIDD issued guidance in Memo 212](#) regarding new flexibilities with regard to staffing requirements under the 1915(c) waivers. The memo laid out a process for assessing individualized needs, developing emergency back-up and monitoring plans, and the use of Enabling Technology (when appropriate), including review and approval by the Regional Offices prior to implementation. As outlined in the memo, these flexibilities were initially permitted only for persons supported in levels of need 1-3.

In response to the COVID-19 national public health emergency, we recognize that additional demands will be placed on agencies and their staff—in particular, when persons supported or staff have been confirmed positive for COVID-19, are symptomatic, or have potentially been exposed such that isolation in the home or quarantine is warranted to minimize risk of exposure to others.

Accordingly, the Department is expanding flexibility regarding staffing standards for the time-limited period where there is a declared Federal or State emergency, in order to allow essential services delivery to continue *in circumstances where staffing resources are limited due to the pandemic*. As a fundamental principle, **all Residential Support providers remain responsible for maintaining a level of direct and indirect supports and services for up to 24 hours per day which anticipate and assure the level of support needed by each person supported in order to ensure the person's health and safety through a combination of appropriate supports such as enabling technology, paid staff, and natural supports.**

Agencies should begin **now** to assess the needs of persons supported and to develop contingency staffing plans that can be implemented *when* and **if** they are needed during the period of the emergency. Steps 1 and 2 outlined in the January 30 memo are essential, but may be conducted with a more targeted focus on understanding *each person's actual* support needs, developing a modified staffing plan *for each site* to ensure that each person's individualized needs are met in the event staffing resources are limited as a result of the pandemic, and developing *an agency-wide plan* for monitoring to quickly identify and address potential concerns, including emergency back-up, as needed. While understandably fluid, the provider's staffing plan for each home and the agency-wide plan for monitoring and back-up must be available upon request and adherence to the plan maintained throughout the emergency period. Further, there should be clear documentation regarding the circumstances which give rise to the need for implementation of the(se) plan(s), i.e., COVID-19 related staffing demands or

shortages.

During the period of the emergency, these plans will **not** be submitted to DIDD for review and approval. Consent for any changes that modify 24-hour, on-site, staffing expectations should be maintained by the agency, *directly related to COVID-19 impact*, and be available for review. In addition, all requirements for the individual's safety in the absence of a staff person must be met.

Also, during the period of the emergency, these flexibilities are permitted across all levels of need when related to staffing shortages directly related to the pandemic, subject to the specifications below.

Applicable Residential Services

The provider may, in accordance with the guidance set forth in this memo, during this time-limited exception to staffing standards, alter their existing staffing plan and schedule for any residential habilitation home, supported living home, family model, or medical residential setting where COVID-related staffing issues impact the provider's ability to adhere to current staffing standards, so long as supports continue to be adequate to protect individual's health and safety.

In order to apply these time-limited flexibilities, the following minimum requirements must be met:

- For individuals who require **Level 1 - Level 3** staff support and supervision, at least one staff person must be on site **or available** whenever an individual is present in the home. Periods of unsupervised time during awake hours may be permitted by indication in the revised staffing plan. Unsupervised time can occur during awake or overnight hours with emergency response procedures in place.
- For individuals who require **Level 4** staff support and supervision, at least one staff person must be on site whenever an individual is present in the home, and additional staff support must be available and provided, as needed, via emergency response as indicated in the emergency staffing plan. Overnight staffing will not be required to stay awake during these emergency allowances but must still be on-site.
- For individuals who require **Level 5** (Medical Residential Services), at least one staff person must be onsite whenever an individual is present in the home. The staff person

shall be required to be licensed as an LPN or higher qualification only when skilled nursing services are required and as prescribed per the physician's order. Overnight staffing will not be required to stay awake during these emergency allowances but must still be on-site. Emergency response procedures may be used to support the immediate response of additional staff when needed. Health care oversight shall continue to be provided as required by a Registered Nurse.

- For individuals who are receiving **Level 5** (Family Model Residential Supports), supervision is required during all awake hours and at times during the night when the individual is not sleeping. During this time-limited exception to staffing standards persons approved for Level 5 supports will be required to have access to one (1) staff with emergency response procedures in place.
- For individuals who require **Level 6** staff support and supervision, at least one staff person must be on site and awake whenever an individual is present in the home. Emergency response procedures may be used to support the immediate response of additional staff when needed.

Note that this is not a broad lifting of all staffing standards in the 1915(c) waivers, but rather broad flexibility as it relates to staffing adjustments in order to allow essential services delivery to continue *in circumstances where staffing resources are limited due to the pandemic*. We expect that providers begin *now* to develop these contingency plans to ensure that agencies are prepared in the event their implementation is warranted. Other (non-COVID-19 related) staffing adjustments are permitted as outlined in the memo issued on January 30th and should continue in accordance with that guidance. Experience gained during the emergency period will be carefully evaluated as we continue to evolve our policies going forward.