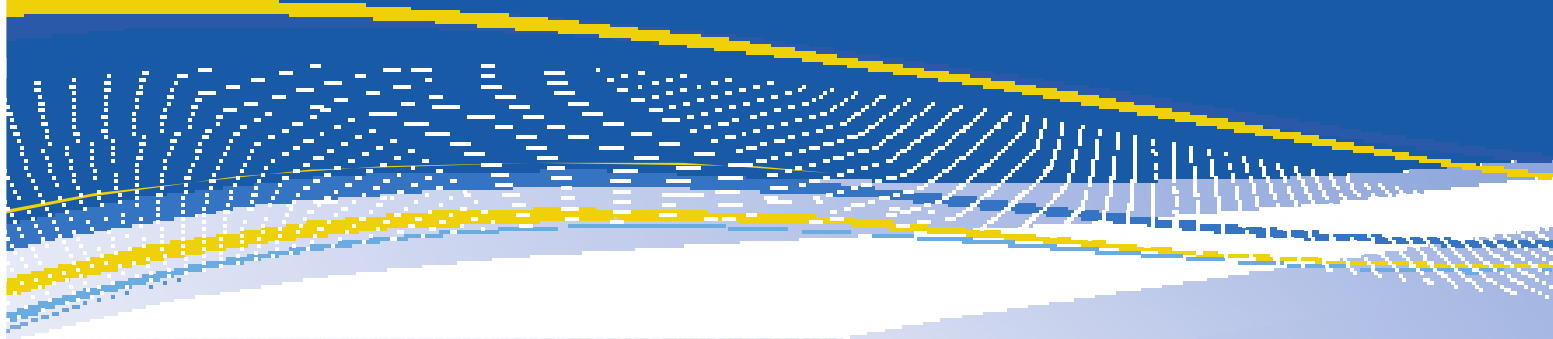
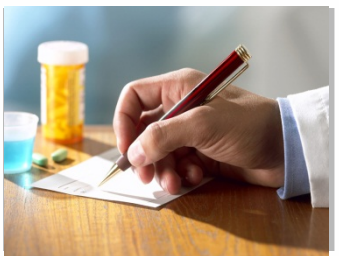




Home and Community-Based Settings Regulation – Implementation Updates and Impacts of the Public Health Emergency

**Division of Long-Term Services and Supports
Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services**



Purpose

- Share the status of Statewide Transition Plans and progress with implementation of the settings rule.
- Provide an overview of the HCBS Settings Rule.
- Describe actions states are taking during the public health emergency to continue implementation of the Settings Rule.
- Summarize utilization by states of flexibilities provided through the public health emergency to support COVID-19 pandemic responses.
- Discuss post-pandemic planning.
- Provide guidance to states on the best approach for transitioning from pandemic to post-pandemic operations.

Statewide Transition Plan Status and Timeline Extension

Statewide Transition Plan Approval Status:

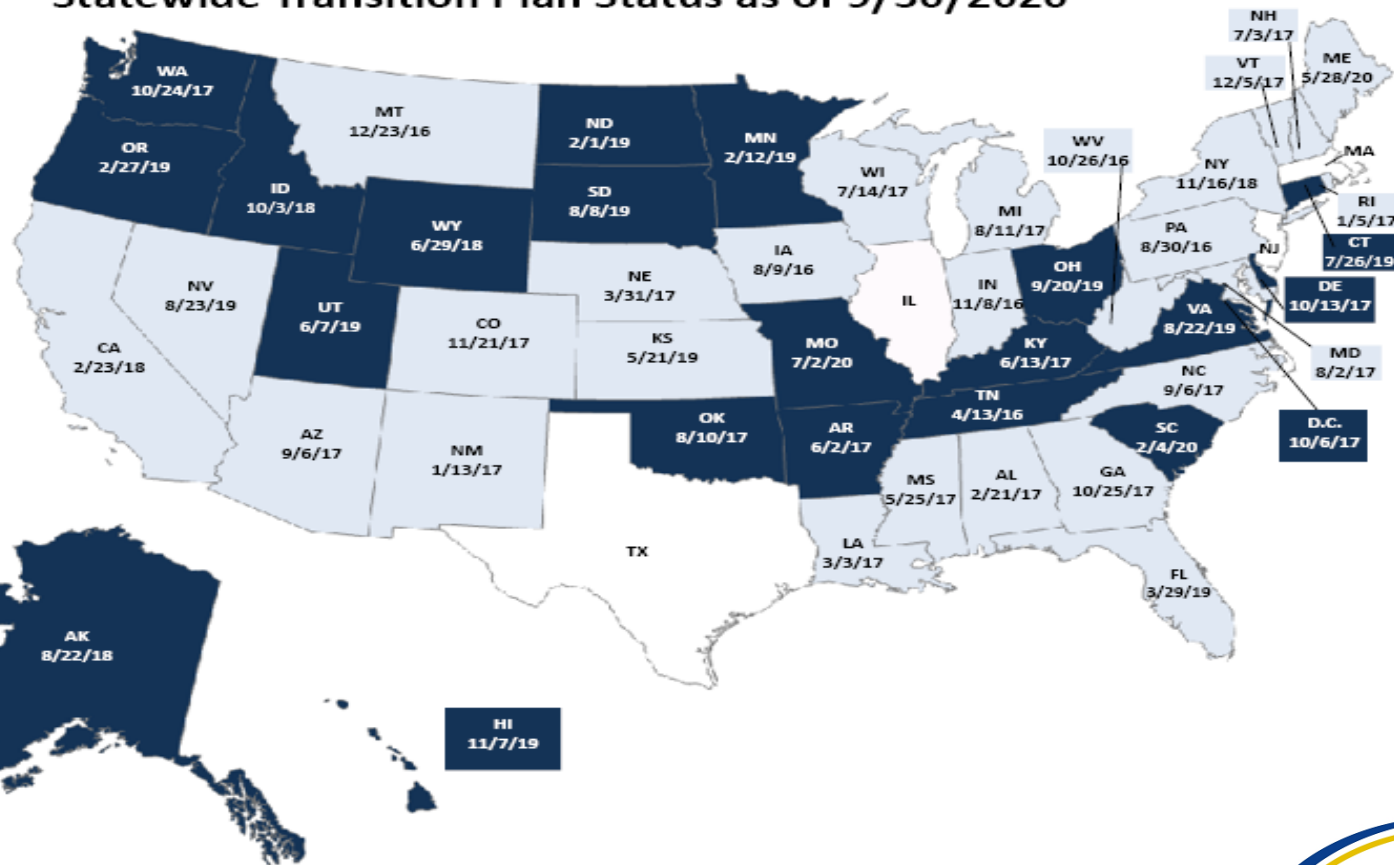
- Forty-seven have achieved initial approval.
- Twenty-one of these states have received initial and final approval.

In light of impact of the COVID-19 public health emergency and to ensure the continued delivery of quality Medicaid HCBS to beneficiaries, CMS granted states an additional year through March 17, 2023, to complete implementation of activities required to demonstrate compliance with the settings criteria.

<https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd20003.pdf>

Statewide Transition Plan Status

Statewide Transition Plan Status as of 9/30/2020



Home and Community-Based Settings Criteria

Is integrated in and supports full access to the greater community.

Provides opportunities to seek employment and work in competitive integrated settings, engage in community life and control personal resources.

Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid HCBS.

Home and Community-Based Settings Criteria (cont'd)

Is selected by the individual from among settings options including non-disability specific settings and an option for a private unit in a residential setting.

The setting options are identified and documented in the person-centered service plan.

The setting options are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.

Home and Community-Based Settings Criteria (cont'd)

Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.

Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices.

Facilitates individual choice regarding services and supports and who provides them.

Additional Criteria: Provider-Owned or Controlled Settings

Unit or dwelling is a specific place owned, rented or occupied under a legally enforceable agreement.

Each individual has privacy in their sleeping/living unit; units have entrance doors lockable by the individual with only appropriate staff having keys to the doors.

Individuals sharing units have a choice of roommates and the freedom to furnish and decorate their sleeping/living units within the lease/agreement.

Individuals have the freedom and support to control their own schedules and activities.

Additional Criteria: Provider-Owned or Controlled Settings (cont.)

Individuals have access to food at any time.

Individuals are able to have visitors of their choosing at any time.

The setting is physically accessible to the individual.

Modification of the Conditions: Documented in the Person-Centered Service Plan

Any modification of the additional conditions for provider-owned or controlled settings must be:

- Supported by a specific assessed need
- Justified in the person-centered service plan.
- Documented in the person-centered service plan.

Modification of the Conditions: Documented in the Person-Centered Service Plan (cont'd)

Documentation in the person-centered service plan of modifications of the additional criteria must:

- Identify a specific and individualized assessed need.
- Document the positive interventions and supports used prior to any modifications to the plan.
- Document less intrusive methods of meeting the need that have been tried but did not work.
- Include a clear description of the condition that is directly proportionate to the specific assessed need.

Modification of the Conditions: Documented in the Person-Centered Service Plan (cont'd)

- Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- Include the informed consent of the individual.
- Include an assurance that interventions and supports will cause no harm to the individual.

See: 42 CFR 441.301(c)(4)(vi)(F)(1)-(8),
441.530(a)(1)(vi)(F)(1)-(8), 441.710(a)(1)(vi)(F)(1)-(8)

Statewide Transition Plan

Impact of COVID-19

- As states are responding to the COVID 19 public health emergency, CMS recognized that its impact has necessitated changes to states' ongoing efforts to comply with the HCBS settings criteria.
- States' stay-at-home and/or safer-at-home orders and the process of social distancing have made it difficult, if not impossible, for states to accurately evaluate how an individual is experiencing community integration in current HCBS settings.

Home and Community-Based Settings Compliance Deadline

- These necessary directives have seriously impacted not only the measurement of community integration for individuals, but the intent of the Settings Rule to ensure that individuals with disabilities and older adults have the opportunity to be active participants in their communities.
- Older adults and individuals with disabilities who receive Medicaid HCBS often have underlying conditions that increase risks to health and welfare associated with COVID-19 that can further delay a return to integrated activities as they existed prior to the global pandemic.

Activities During the Pandemic

- 38 states participated in small group monthly calls during April, May, July and August of 2020 to share progress, challenges, and strategies related to implementing the HCBS settings rule.
- Beginning in April 2020, state representatives began to express their concern related to the continuation of on-site visits during COVID-19.
- Additionally, 3 states discussed alternative strategies to on-site visits during one-on-one direct technical assistance calls with CMS.

State Alternatives to On-Site Visits During COVID-19: Shifting Activities of Focus

- Due to the health risks and restrictions imposed by the COVID-19 pandemic, 11 of the states included in this analysis ceased their on-site validation and monitoring visits.
- States developed a variety of alternative strategies to on-site visits, in-person interviews with individuals receiving services, other STP activities, and heightened scrutiny reviews.
- Rather than halting their validation and monitoring activities, 7 states shifted their work to other areas until they can get back in the field, including continuing with desk reviews of validation activities or completing provider interviews over the phone.

State Alternatives to On-Site Visits During COVID-19: Leveraging Technology/Phone Calls

- States that did not want to halt or delay validation and monitoring activities also leveraged technology to continue their work: phone calls, FaceTime, Google Hangouts, Google for Business, Zoom, Microsoft Teams, WebEx to continue consumer interviews and to participate in virtual validation and monitoring visits:
 - 5 states restricted phone calls to consumer interviews;
 - 1 state performed provider validation visits via phone;
 - 1 state conducted a reevaluation activity over the phone.

State Alternatives to On-Site Visits During COVID-19: Video Conferencing and Online Tools

- 11 states used video conferencing to move forward on their validation and monitoring visits:
 - Of these, 1 state used video conferencing to focus on technical assistance including providers' use of the computer or phone to show the state the physical infrastructure relating to questions about the setting itself.
- 3 states used online review tools to collect provider information.

State Alternatives to On-Site Visits During COVID-19: Challenges

Challenges with Virtual Validation and Monitoring Visits

- Individuals with limited phone minutes;
- Individuals struggling to recall what life was like before COVID-19;
- Difficulty in observing non-verbal communication when not in person;
- Some individuals rely on sign language or can respond, but not with words (nodding, head shaking, etc.);
- Provider's lack of internet access.

CMS HCBS COVID Disaster Relief

A suite of tools is available to facilitate states' flexibilities in responding to the public health emergency, initially declared on January 27, 2020 and extended multiple times for 90 days, most recently effective October 23, 2020.

- Appendix K: Provides temporary or emergency-specific amendment(s) to an approved 1915(c) waiver.
- Appendix K Addendum: COVID-19 Pandemic Response: A CMCS prepopulated section based on the common needs that states have identified during their response to the COVID-19 Pandemic.
- Attachment K: Provides temporary or emergency-specific amendment(s) to HCBS authorized in an approved 1115 waiver.

CMS HCBS COVID Disaster Relief (cont.)

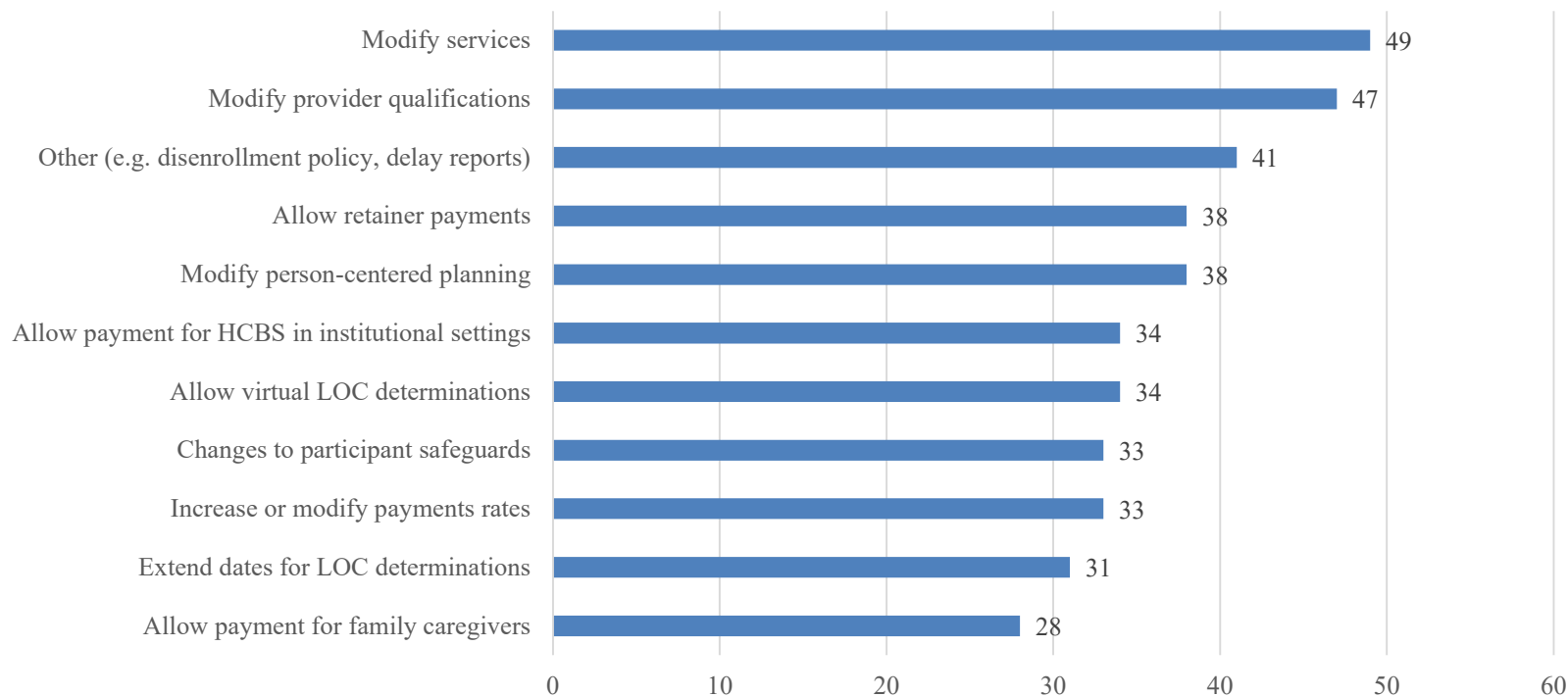
- 1135 Waiver: Allows the HHS Secretary to take actions under Section 1135 of the Social Security Act to waive certain statutes and implementing regulations. The state may specify the duration of the request not to exceed the Public Health Emergency declaration timeframe.
- Disaster Relief State Plan Amendment: Assists states in responding to the COVID-19 Public Health Emergency through multiple, time-limited options to revise the Medicaid state plan. The state may specify the duration of the request not to exceed the Public Health Emergency declaration timeframe.

CMS HCBS COVID Disaster Relief (cont.)

- COVID-19 Section 1115 Demonstration: Provides opportunities for states to make available a number of authorities and flexibilities to assist states in enrolling and serving beneficiaries in Medicaid and to focus state operations on addressing the COVID-19 pandemic. The demonstration will expire no later than 60 days from the end of the Public Health Emergency declaration.

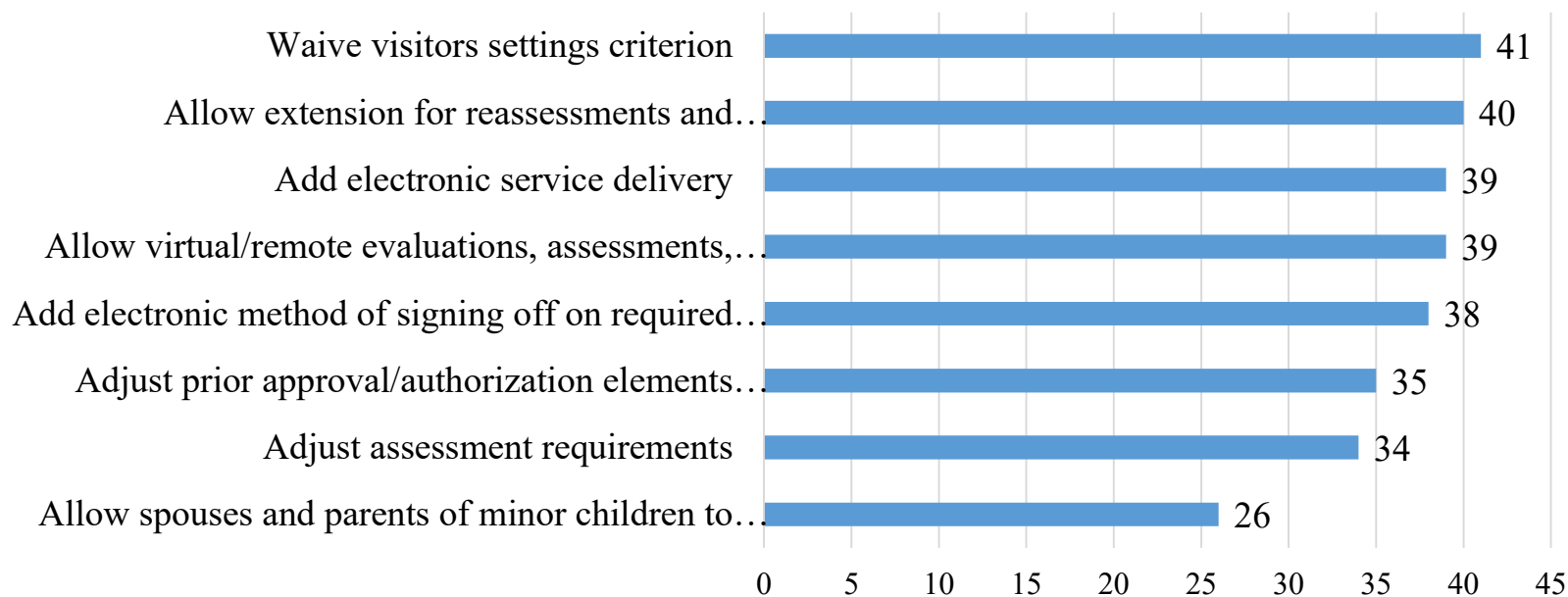
Settings Flexibilities Using 1915(c) Waiver Appendix K Amendments (N=50)

Number of States Selecting Option



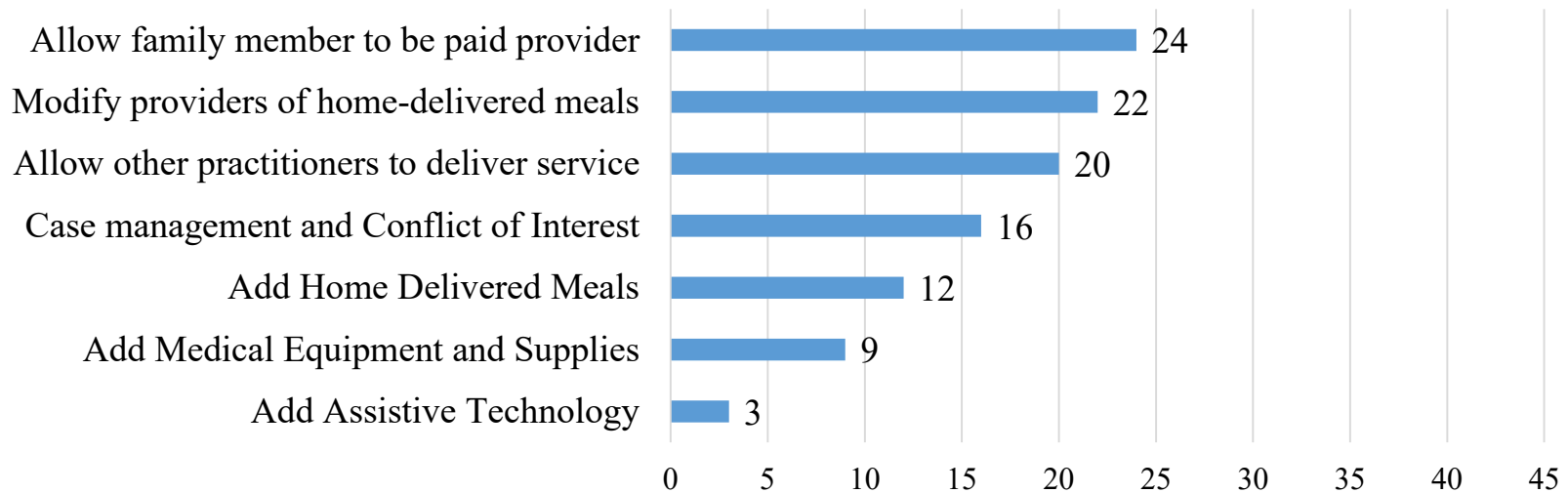
State Use of the Appendix or Attachment K COVID-19 Addendum by Frequency of Selection

Number of States Selected Option 1 of 2



State Use of the Appendix or Attachment K COVID-19 Addendum by Frequency of Selection (cont'd)

Number of States Selected Option 2 of 2



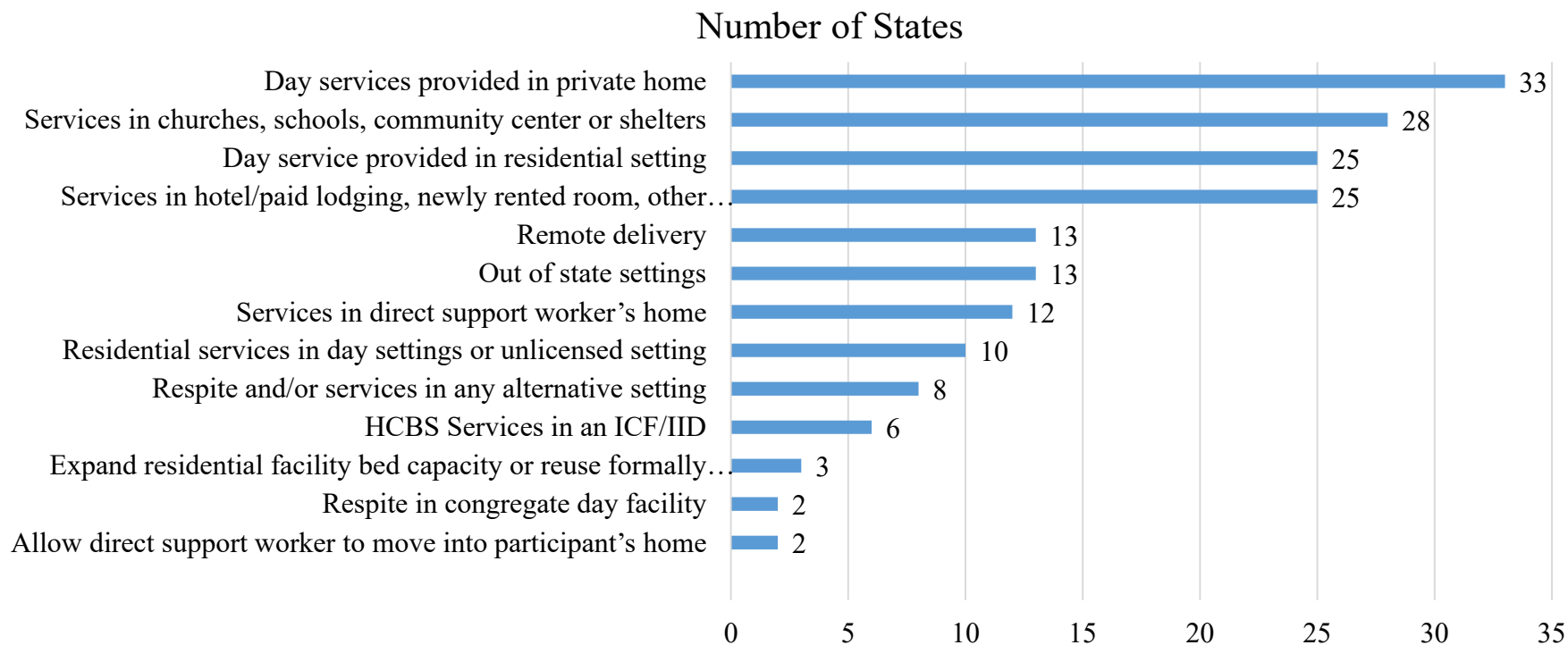
Additional Settings & Service Delivery Options Across HCBS Authorities

- Added services via Appendix K:
 - 24 states added new services affecting 78 HCBS programs
 - 4 states added to their approved menu of self-directed services
- Expanded allowable service settings:
 - 48 states requested delivery of services in new settings
 - 15 states requested authority to deliver services in out of state settings
 - 22 states received an 1135 waiver to allow services provided under the 1915(c) HCBS waiver program, the 1915(i) HCBS state plan benefit, and the 1915(k) Community First Choice state plan option to be provided in settings that have not been determined to meet the home and community-based settings criteria.

Service Types Selected for Expanding Settings (of 48)

Type of Service	Total No. and Percentage of States (of 48)
Day Services	39 states (81%)
Residential Services	30 states (63%)
Respite	26 states (54%)
In-Home Services, including Individual and Family Support	19 states (40%)
Clinical and Therapeutic Services	16 states (33%)
Not Specified	8 states (17%)

Appendix K Expanded Settings Locations



Life After COVID-19: Post-Pandemic Planning

- What is the state's glide path to a post-pandemic era as restrictions imposed by the COVID-19 public health emergency are relaxed or eliminated?
- What steps should the state be taking to ensure a smooth transition to re-opening in-person waiver services and supports?
- How can a state ensure that participants re-connect with their communities in ways that reflect individualized choices and preferences while taking into account the dignity of risk?
- How will a state “unwind” the flexibilities approved under the 1915(c) Appendix K amendment(s) and/or the COVID-19 Addendum?
- How will the state ensure operational procedures are ready to resume without 1135 flexibilities?

What Does It Mean to “Unwind” Appendix K or COVID-19 Addendum Flexibilities?

Unwinding:

- The assessment process that each state designs and implements to systematically determine how it will:
 - Either return its HCBS waiver programs, services and supports to their pre-pandemic operation; and/or
 - Adapt techniques and strategies learned from the use of those flexibilities to re-configure the delivery of waiver services to adjust to the changing needs of participants and providers.

What Does It Mean to “Unwind” Appendix K or COVID-19 Addendum Flexibilities? (cont’d)

Unwinding:

- Post-pandemic, states will need to re-institute on-site strategies, for the evaluation of individual’s access to community integration.
- Electronic service delivery may offer opportunities to reach participants in areas where provider capacity challenges remain. Services like career exploration, discovery and supported employment training and support could continue to be effective.

What Does It Mean to “Unwind” Appendix K or COVID-19 Addendum Flexibilities? (cont’d)

Unwinding:

- States may also find it effective to continue to use assistive technology and/or to combine remote and in-person service delivery if there is continued social distancing to assist individuals to acclimate to community activities at their own pace with the goal of full community integration that may result in the fading of the remote service delivery component..
- In consideration of each individual’s preference in how to systematically and safely re-engage in community activities, states may consider continuing using spouses, parents of minor children, and/or other family members to be paid providers of services to ensure appropriate service delivery.

Disaster Relief State Plan Amendments

Flexibilities and Authorities	States
Modify benefits including adding new services, telehealth options, removing limit caps and increasing home delivered meals	AR(i), CT (i), CT (k), DC(i), IA(i), OR (k)
Allow relatives and/or legally responsible persons to deliver service	CT (i), IA(i)
Allow virtual eligibility and independent assessments	DC(i), MI(i), OR (k)
Extend date for level of care re-evaluations	OR (k)
Person-centered planning modifications	CT(i), IA(i), MI(i), OR (k)
Modify provider qualifications and add provider types	CT(i), OR (k), OR (i)
Increase or modify payment rates	AR(i), DC(i), MI(i), OR (k)
Use retainer payments	OR (k)
Payment of HCBS in an acute care hospital setting	OR (k)
Expanded settings	IA(i), OR (i), OR (k)
Conflict of interest	IA(i)
Waive visitors requirement under Settings Rule	IA(i)

New Public Health Emergency 1115s

Flexibilities and Authorities	States
Waiver for state-wideness	NC, WA
Expand access and eligibility and allow self-assessment of disability or Level of Care	NC, WA
Vary the amount, duration and scope of services based on population needs	NC, RI, WA
Extend 1915(i)-like eligibility dates	HI
Extend 1915(c)-like Level of Care dates	HI
Allow eligibility and Level of Care self-attestation and delay Level of Care for one year	NC, WA
Allow retainer payments	HI, NC, NH, RI, WA
Waive visitor requirements under Settings Rule	HI
Modify payment rates	WA
Modify functional assessment requirements	NC, WA
Allow payment for services even if the PCP is not timely updated	NC, WA

Resources

CMS Baltimore Office Contact—Division of Long-Term Services and Supports: HCBS@cms.hhs.gov

**To request Technical Assistance:
HCBSSettingsTA@neweditions.net**

**Information on Medicaid.gov regarding COVID-19:
<https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/coronavirus-disease-2019-covid-19/index.html>**