



All-State Medicaid and CHIP Call June 6, 2023



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Agenda

- Update on Unwinding
- New Strategies to Prevent Procedural Terminations
- Paid Family Caregivers for Personal Care Services - Options Beyond the COVID-19 Public Health Emergency
- Open Mic Q and A

Paid Family Caregivers

Options Beyond the COVID-19 Public Health Emergency (PHE)



Summary

- **While the public health emergency (PHE) has ended, states continue to have flexibility under Medicaid to pay for family caregivers under certain authorities**
- State Medicaid agencies are ultimately the decision-maker in whether they will continue paying family caregiving reimbursements.
- **We are calling on states to take advantage of these opportunities and continue these flexibilities for family caregivers.**
- At CMS, we will continue doing everything we can to educate, engage, and assist state Medicaid agencies in providing the services their beneficiaries need.
- During the COVID-19 public health emergency, many states took up temporary flexibilities to provide family caregivers payments through Medicaid. Now that the PHE has ended, states are deciding whether to continue these flexibilities.
- CMS has worked for over a year with states to prepare for the end of the PHE and to plan for how they will return to normal operations.

Background on Personal Care under 1905(a) Authority

- Section 1905(a)(24) of the Social Security Act (the Act) prohibits family members from being paid providers of personal care services. Under regulations at §440.167(b), family member is defined as “legally responsible relative.”
- Under the PHE, states were able to apply for a waiver under section 1135(b)(1)(B) of the Act to temporarily allow payment during the PHE for 1905(a) personal care services rendered by legally responsible individuals (which could include legally responsible family caregivers), provided that the state made a reasonable assessment that the caregiver is capable of rendering such services.

Background on 1915(c) and (i)

- States have the option to receive federal reimbursement of personal care services rendered by legally responsible individuals when such services are deemed “extraordinary care,” so long as the state specifies satisfactory criteria for authorizing such payments.
- Under Appendix K amendments and disaster relief state plan amendments, states were allowed the option to temporarily permit payment for services rendered by family caregivers or legally responsible individuals under 1915(c) waivers and 1915(i) state plan benefits, respectively, as part of waiver or state plan operations during the PHE.
- States choosing this temporary option had to indicate the services to which this applied, the safeguards used to ensure that individuals received necessary services as authorized in the plan of care, and the procedures used to ensure that payments were made for services rendered.

Continuing Flexibility Post-PHE

- As the PHE flexibilities terminate* based on the expiration of the COVID-19 PHE declaration, states may exercise options to continue the use of family members, including legally responsible individuals, as paid caregivers.
- The following slides illustrate options by benefit category, and the services that can receive federal reimbursement when provided by family members.

Continuing Flexibility Post-PHE (continued)

- Home Health Benefit: 1905(a)(7)
 - No statutory or regulatory prohibition on family members/legally responsible relatives as providers
 - Allows family members/legally liable relatives who meet the provider qualifications and are employed by or under arrangement with a Home Health Agency to provide medically necessary home health services
 - This includes home health aide services, which provide assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs)

Continuing Flexibility Post-PHE (continued)

- 1915(c) HCBS Waivers, 1915(i) State Plan HCBS Benefit, and Section 1115 Demonstrations
 - States continue to have the option to receive payment for personal care services rendered by legally responsible individuals when such services are deemed “extraordinary care” so long as the state specifies satisfactory criteria for authorizing such payments.

Continuing Flexibility Post-PHE (continued)

- 1915(j) Self-Directed Personal Assistant Services
 - This is a service delivery option that allows self-direction of 1905(a)(24) personal care services and/or 1915(c) HCBS waiver services
 - States can allow beneficiaries to hire family members, including legally responsible individuals
 - Participants set their own provider qualifications

Continuing Flexibility Post-PHE (continued)

- 1915(k) Community First Choice
 - Provides home and community-based attendant services and supports to eligible Medicaid enrollees
 - 6 percentage point increased Federal match to states for service expenditures
 - Enrollees can hire legally responsible individuals (self-directed service delivery model)
 - States can allow legally responsible family members to work for agencies (agency service delivery model)
 - Enrollees set their own provider qualifications (self-directed service delivery model)

Continuing Flexibility Post-PHE (continued)

- States interested in relying on state plan or waiver authorities to continue reimbursing family members, including legally responsible individuals, for covered services should be mindful of effective dates and submission requirements associated with each authority.
- For example, except for 1915(i), state plan amendments (SPAs) may only be effective retroactive to the beginning of the calendar quarter in which they were submitted; 1915(c) waivers, 1915(i) SPAs, and 1115 authorities would require prospective effective dates.

Continuing Flexibility Post-PHE (continued)

- Personal care services authorized under 1905(a) can no longer be provided by parents, due to a statutory prohibition, which we were able to waive under 1135 authority during the PHE.
- States interested in seeking this flexibility on a more permanent basis could submit a section 1115 application, consistent with section 1115 public notice and transparency requirements, for CMS consideration.

Questions
