DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-25-26
Baltimore, Maryland 21244-1850

State Demonstrations Group

September 28, 2020

Stephen M. Groff
Medicaid Director
Division of Medicaid and Medical Assistance
Department of Health and Social Services
1901 N. Dupont Highway
New Castle, DE 19720

Dear Mr. Groff

The Centers for Medicare & Medicaid Services (CMS) is approving a modification to the state's Special Terms and Conditions (STCs) for Delaware's section 1115(a) demonstration, titled "Delaware Diamond State Health Plan Section 1115 Demonstration" (Project Number 11-W-00036/4).

On April 13, 2020, Delaware submitted an Emergency Preparedness and Response Appendix K to amend its Delaware Diamond State Health Plan section 1115(a) demonstration to address the COVID-19 public health emergency. All of the flexibilities approved in the state's 1915(c) Appendix K request shall extend to the populations identified within the state's demonstration. The approved modifications detailed below are necessary to assist the state in delivering the most effective care to its beneficiaries in light of the COVID-19 public health emergency. CMS determined that the state could effectuate the requested changes through an Attachment K to these STCs

The authorities approved in the Attachment K are effective from March 1, 2020, through February 28, 2021, and apply in all locations served by the demonstration for anyone impacted by COVID-19 who receives home and community-based services through the demonstration. The approved Appendix K has been attached and incorporated into the demonstration's STCs as "Attachment K."

These modifications will support Delaware to ensure that sufficient health care services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers are able to adapt services to continue to provide essential services to program participants during the COVID-19 public health emergency.

We appreciate your state's commitment to addressing the significant challenges posed by the COVID-19 pandemic and we look forward to our continued partnership on the Delaware Diamond State Health Plan section 1115(a) demonstration. If you have any questions regarding this correspondence, please contact your CMS project officer, Mr. Thomas Long, by e-mail at Thomas.long@cms.hhs.gov.

Sincerely,

9/28/2020

X Andrea J. Casart

Signed by: Andrea J. Casart -A

Andrea J. Casart
Director
Division of Eligibility and Coverage Demonstrations

Enclosure

cc: Talbatha Myatt, State Monitoring Lead, Medicaid and CHIP Operations Group

APPENDIX K: Emergency Preparedness and Response

Background:

This standalone appendix may be utilized by the state during emergency situations to request amendment to its approved waiver. It includes actions that states can take under the existing Section 1915(c) home and community-based waiver authority in order to respond to an emergency. Other activities may require the use of various other authorities such as the Section 1115 demonstrations or the Section 1135 authorities.[i] This appendix may be completed retroactively as needed by the state.

Appendix K-1: General Information

General Information:

A. State: Delaware_____

B. Waiver Title: Delaware Diamond State Health Plan

C. Control Number:

11-W-0036/3

D. Type of Emergency (The state may check more than one box):

X	**Pandemic or Epidemic**
O	**Natural Disaster**
O	**National Security Emergency**
O	**Environmental**
O	**Other (specify):**

E. Brief Description of Emergency. *In no more than one paragraph each*, briefly describe the: 1) nature of emergency; 2) number of individuals affected and the state's mechanism to identify individuals at risk; 3) roles of state, local and other entities involved in approved waiver operations; and 4) expected changes needed to service delivery methods, if applicable. The state should provide this information for each emergency checked if those emergencies affect different geographic areas and require different changes to the waiver.

At DMMA's discretion, the provisions described in this amendment to the Delaware DSHP 1115 Waiver apply to all DSHP Plus populations eligible for the HCBS services described in STC Attachment C "DSHP Plus HCBS Service Definitions." DMMA will work collaboratively with its contracted MCOs to ensure delivery of services and the health and safety of DSHP Plus MCO members.

The Governor issued a State of Emergency declaration on March 12, 2020 that became effective on March 13, 2020 ordering Delawareans to stay at home whenever possible and closing all non-essential businesses in Delaware to help fight the spread of COVID-19. The declaration will remain in effect until the public health threat is eliminated. The COVID-19 pandemic has required all Delawareans to take dramatic emergency actions to slow the transmission of the virus from person to person. This includes practicing "social distancing" which is impeding DMMA's ability to ensure that individuals are engaged in the community, as this is contraindicated at this time for their health and well-being. DMMA is addressing the impact on its employees, MCOs, and provider direct support professionals of staffing shortages that may result from individuals being quarantined or isolated, in addition to the potential for quarantine or isolation of DSHP Plus members.

Delaware is seeking discretion to implement temporary changes through the DSHP MCOs to several HCBS components of the DSHP Plus 1115 waiver to minimize the need for administrative activities to be conducted in person, to increase service benefits, to address issues of potential provider staffing shortages, to expand potential settings in which services can be delivered and to assist providers as needed to be financially viable so that they can resume normal activities after the emergency.

MCOs may be required to increase fee schedules to providers as well as make retainer payments to certain habilitation and personal care providers consistent with the flexibilities granted under this 1115 demonstration to the extent that DMMA determines it necessary. Capitation rates paid to MCOs must be actuarially sound consistent with 42 CFR 438.4 and as such will be evaluated to ensure the rates are projected to provide for all reasonable, appropriate and attainable costs including any increased fee schedules and retainer payments.

F. Proposed Effective Date: Start Date: March 1, 2020 **Anticipated End Date:** February 28, 2021

G. Description of Transition Plan.

N/A

H. Geographic Areas Affected:

Entire State.

I. Description of State Disaster Plan (if available) ***Reference to external documents is acceptable*****:**

N/A

Appendix K-2: Temporary or Emergency-Specific Amendment to Approved Waiver

Temporary or Emergency-Specific Amendment to Approved Waiver:

These are changes that, while directly related to the state's response to an emergency situation, require amendment to the approved waiver document. These changes are time limited and tied specifically to individuals impacted by the emergency. Permanent or long-ranging changes will need to be incorporated into the main appendices of the waiver, via an amendment request in the waiver management system (WMS) upon advice from CMS.

a.___ Access and Eligibility:

i.___ Temporarily increase the cost limits for entry into the waiver.
[Provide explanation of changes and specify the temporary cost limit.]

ii.___ Temporarily modify additional targeting criteria.
[Explanation of changes]

b._X_ Services

i. __Temporarily modify service scope or coverage.
[Complete Section A- Services to be Added/Modified During an Emergency.]

ii. X__Temporarily exceed service limitations (including limits on sets of services as described in Appendix C-4) or requirements for amount, duration, and prior authorization to address health and welfare issues presented by the emergency.
[Explanation of changes]

Expand home-delivered meals as described in Attachment C of the DSHP 1115 STCs by increasing the daily limit available from one meal per day to up to 2 meals per day, if medically appropriate and necessary to avoid institutionalization in a hospital or a nursing facility. This temporary authority for DSHP Plus is not applicable to individuals enrolled in the state's 1915(c) Lifespan Waiver.

iii. ___Temporarily add services to the waiver to address the emergency situation (for example, emergency counseling; heightened case management to address emergency needs; emergency medical supplies and equipment; individually directed goods and services; ancillary services to establish temporary residences for dislocated waiver enrollees; necessary technology; emergency evacuation transportation outside of the scope of non-emergency transportation or transportation already provided through the waiver).
[Complete Section A-Services to be Added/Modified During an Emergency]

iv. _X__Temporarily expand setting(s) where services may be provided (e.g. hotels, shelters, schools, churches) Note for respite services only, the state should indicate any facility-based settings and indicate whether room and board is included:
[Explanation of modification, and advisement if room and board is included in the respite rate]:

DSHP MCOs may authorize any of the DSHP Plus services described in Attachment C (except for home modifications) to be provided in a hotel, shelter, church, or alternative facility-based setting or the home of a direct care worker, with permission from DMMA, when the DSHP Plus participant is displaced from their home because of quarantine or hospitalization or when providers are unavailable due to illness or business closure.

v.___ Temporarily provide services in out of state settings (if not already permitted in the state's approved waiver). [Explanation of changes]

c._ __ Temporarily permit payment for services rendered by family caregivers or legally responsible individuals if not already permitted under the waiver. Indicate the services to which this will apply and the safeguards to ensure that individuals receive necessary services as authorized in the plan of care, and the procedures that are used to ensure that payments are made for services rendered.

d.___ Temporarily modify provider qualifications (for example, expand provider pool, temporarily modify or suspend licensure and certification requirements).

i.___ Temporarily modify provider qualifications.

[Provide explanation of changes, list each service affected, list the provider type, and the changes in provider qualifications.]

ii.___ Temporarily modify provider types.

[Provide explanation of changes, list each service affected, and the changes in the .provider type for each service].

iii.___ Temporarily modify licensure or other requirements for settings where waiver services are furnished.

[Provide explanation of changes, description of facilities to be utilized and list each service provided in each facility utilized.]

e. _X__Temporarily modify processes for level of care evaluations or re-evaluations (within regulatory requirements). [Describe]

DMMA will allow for alternate mechanisms to in-person meetings for member level of care evaluations and re-evaluations including assessments conducted via telephonic and video-conferencing.

f. __ Temporarily increase payment rates

[Provide an explanation for the increase. List the provider types, rates by service, and specify whether this change is based on a rate development method that is different from the current approved waiver (and if different, specify and explain the rate development method). If the rate varies by provider, list the rate by service and by provider].

g._X__ Temporarily modify person-centered service plan development process and individual(s) responsible for person-centered service plan development, including qualifications.

[Describe any modifications including qualifications of individuals responsible for service plan development, and address Participant Safeguards. Also include strategies to ensure that services are received as authorized.]

The following modifications will be made for the development, implementation and monitoring of the person-centered service plan:

1) Allow for completion of meetings and contacts for the development, implementation and monitoring of the person-centered planning process to be completed via phone, video-conferencing or other electronic communications that enable direct contact with the member, member's representative and any contracted service providers, as needed, in accordance with HIPAA requirements.

2) Allow for electronic signature of person-centered planning documents.

3) The person-centered service plan may be updated to allow for additional or modified supports to respond to individualized needs during the COVID-19 pandemic. Modifications to the person-centered service plan that are needed due to the member's needs and circumstance may be completed without the input of the entire person-centered planning support team. The person-centered service plan, including the amount, duration and scope of service, will be updated within -60 days from the date the service begins. Verbal approval or email approval of changes and additions to person-centered service plans and services will suffice as authorization to begin services while awaiting the signed documents dated the date of the meeting to avoid delays that may occur due to staff working remotely.

4) Person-centered service plans can be renewed for an additional 12 months if a meeting is held via phone, video-conferencing or other electronic communications and the member/member's representative agree that current services are appropriate and do not need to be updated, and service providers agree to continue to render continued services.

h.___ Temporarily modify incident reporting requirements, medication management or other participant safeguards to ensure individual health and welfare, and to account for emergency circumstances. [Explanation of changes]

i.___ Temporarily allow for payment for services for the purpose of supporting waiver participants in an acute care hospital or short-term institutional stay when necessary supports (including communication and intensive personal care) are not available in that setting, or when the individual requires those services for communication and behavioral stabilization, and such services are not covered in such settings.

[Specify the services.]

j._X__ Temporarily include retainer payments to address emergency related issues.

[Describe the circumstances under which such payments are authorized and applicable limits on their duration. Retainer payments are available for habilitation and personal care only.]

DMMA may require MCOs to make retainer payments to certain habilitation, personal care and adult day providers consistent with the flexibilities granted under this 1115 demonstration to the extent that DMMA determines it necessary. Capitation rates paid to MCOs must be actuarially sound consistent with 42 CFR 438.4 and as such will be evaluated to ensure the rates are projected to provide for all reasonable, appropriate and attainable costs including any increased fee schedules and retainer payments.

MCOs will ensure there are no duplicative Medicaid payments to providers.

Retainer payments cannot exceed the lesser of 30 consecutive days or the number of days for which the state authorizes a payment for "bed-hold" in nursing facilities. Retainer payments will occur on a case by case basis when the provider is directly affected by COVID-19, at DMMA discretion.

Retainer payments will not be authorized for a participant for units of service for which a provider is authorized to be paid for actual service delivery.

Retainer payments may only be made for personal care services and habilitative services that include personal care as a component of the service.

k.___ Temporarily institute or expand opportunities for self-direction.

[Provide an overview and any expansion of self-direction opportunities including a list of services that may be self-directed and an overview of participant safeguards]

l.___ Increase Factor C.
[Explain the reason for the increase and list the current approved Factor C as well as the proposed revised Factor C]

m._ __ Other Changes Necessary [For example, any changes to billing processes, use of contracted entities or any other changes needed by the State to address imminent needs of individuals in the waiver program]. [Explanation of changes]

Appendix K Addendum: COVID-19 Pandemic Response

1. **HCBS Regulations**
   a. ☒ Not comply with the HCBS settings requirement at 42 CFR 441.301(c)(4)(vi)(D) that individuals are able to have visitors of their choosing at any time, for settings added after March 17, 2014, to minimize the spread of infection during the COVID-19 pandemic.

2. **Services**
   a. ☒ Add an electronic method of service delivery (e.g,. telephonic) allowing services to continue to be provided remotely in the home setting for:
      i. ☒ Case management
      ii. ☒ Personal care services that only require verbal cueing
      iii. ☐ In-home habilitation
      iv. ☐ Monthly monitoring (i.e., in order to meet the reasonable indication of need for services requirement in 1915(c) waivers).
      v. ☐ Other *[Describe]:*

   b. ☐ Add home-delivered meals
   c. ☐ Add medical supplies, equipment and appliances (over and above that which is in the state plan)
   d. ☐ Add Assistive Technology

3. **Conflict of Interest: The state is responding to the COVID-19 pandemic personnel crisis by authorizing case management entities to provide direct services. Therefore, the case management entity qualifies under 42 CFR 441.301(c)(1)(vi) as the only willing and qualified entity.**

a. ☐ Current safeguards authorized in the approved waiver will apply to these entities.
b. ☐ Additional safeguards listed below will apply to these entities.

4. Provider Qualifications

a. ☐ Allow spouses and parents of minor children to provide personal care services.
b. ☐ Allow a family member to be paid to render services to an individual.
c. ☐ Allow other practitioners in lieu of approved providers within the waiver. *[Indicate the providers and their qualifications]*

d. ☐ Modify service providers for home-delivered meals to allow for additional providers, including non-traditional providers.

5. Processes

a. ☒ Allow an extension for reassessments and reevaluations for up to one year past the due date.
b. ☒ Allow the option to conduct evaluations, assessments, and person-centered service planning meetings virtually/remotely in lieu of face-to-face meetings.
c. ☐ Adjust prior approval/authorization elements approved in waiver.
d. ☐ Adjust assessment requirements
e. ☒ Add an electronic method of signing off on required documents such as the person-centered service plan.

Contact Person(s)

A. The Medicaid agency representative with whom CMS should communicate regarding the request:

First Name:	Glyne
Last Name	Williams
Title:	Chief of Planning and Policy
Agency:	Department of Health and Social Services, Division of Medicaid and Medical Assistance
Address 1:	1901 N. DuPont Highway
Address 2:	Lewis Building
City	New Castle
State	Delaware
Zip Code	19720

Telephone:	(302) 255-9628
E-mail	glyne.williams@delaware.gov
Fax Number	(302) 255-4481

B. If applicable, the State operating agency representative with whom CMS should communicate regarding the waiver is:

First Name:	Click or tap here to enter text.
Last Name	Click or tap here to enter text.
Title:	Click or tap here to enter text.
Agency:	Click or tap here to enter text.
Address 1:	Click or tap here to enter text.
Address 2:	Click or tap here to enter text.
City	Click or tap here to enter text.
State	Click or tap here to enter text.
Zip Code	Click or tap here to enter text.
Telephone:	Click or tap here to enter text.
E-mail	Click or tap here to enter text.
Fax Number	Click or tap here to enter text.

8. Authorizing Signature

Signature: Lisa Zimmerman, Deputy Director for Director Groff

Date: 9/11/2020 | 9:13 AM EDT

DocuSigned by:
Lisa Zimmerman
A1640303ECAC440...

State Medicaid Director or Designee

First Name:	Stephen
Last Name	Groff
Title:	Director
Agency:	Department of Health and Social Services, Division of Medicaid and Medical Assistance
Address 1:	1901 N. DuPont Highway
Address 2:	Lewis Building
City	New Castle
State	Delaware
Zip Code	19720
Telephone:	(302) 255- 9663
E-mail	stephen.groff@delaware.gov
Fax Number	(302) 255-4481

Section A---Services to be Added/Modified During an Emergency

Complete for each service added during a time of emergency. For services in the approved waiver which the state is temporarily modifying, enter the entire service definition and highlight the change. State laws, regulations and policies referenced in the specification are readily available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

Service Specification					
Service Title:					
Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:					
Service Definition (Scope)**:**					
Specify applicable (if any) limits on the amount, frequency, or duration of this service:					

Provider Specifications				
Provider Category(s) *(check one or both)***:**	☐	Individual. List types:		Agency. List the types of agencies:
Specify whether the service may be provided by *(check each that applies):*	☐	Legally Responsible Person	☐	Relative/Legal Guardian

Provider Qualifications (*provide the following information for each type of provider)*:

Provider Type:	License *(specify)*	Certificate *(specify)*	Other Standard *(specify)*

Verification of Provider Qualifications

Provider Type:	Entity Responsible for Verification:	Frequency of Verification

Service Delivery Method				
Service Delivery Method *(check each that applies)*:	☐	Participant-directed as specified in Appendix E		Provider managed

[i] Numerous changes that the state may want to make necessitate authority outside of the scope of section 1915(c) authority.

States interested in changes to administrative claiming or changes that require section 1115 or section 1135 authority should engage CMS in a discussion as soon as possible. Some examples may include: (a) changes to administrative activities, such as the establishment of a hotline; (b) suspension of general Medicaid rules that are not addressed under section 1915(c) such as payment rules or eligibility rules or suspension of provisions of section 1902(a) to which 1915(c) is typically bound.