

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

February 24, 2022

Jenney Samuelson
Acting Secretary
Vermont Agency of Human Services
280 State Drive
Waterbury, VT 05671

Dear Ms. Samuelson:

The Centers for Medicare & Medicaid Services (CMS) is approving Vermont's request to extend the approval period of certain Appendix K authorities, which are part of the Vermont Global Commitment to Health Demonstration (Project Number 11-W-00194/1), to respond to the COVID-19 public health emergency (PHE). This approval extends the authorities CMS approved on May 22, 2020 to six months after the end of the federal PHE. This extension has been incorporated into the demonstration's Special Terms and Conditions as Attachment R. Specifically, the state is requesting the extension of all previously approved Attachment R authorities with the following exceptions:

- K-2-e Temporary modified processes for level of care evaluations or re-evaluations (within regulatory requirement).
- K-2-g Temporarily modify the person-centered service plan development process and individual(s) responsible for person-centered service plan development.
- K-Addendum 4-d regarding modified service providers for home-delivered meals to allow for additional providers, including non-traditional providers.

Additionally, this Attachment R extension approves the state's expansion of *K-2-c*, "Temporary payment for services rendered by family caregivers or legally responsible individuals in lieu of care that would have been provided by paid caregivers, within the limits of the existing plan of care," to include certain Traumatic Brain Injury Program services.

The Attachment R authorities that CMS is approving are effective from January 27, 2021, which is the end of the previous approval period, through 6 months after the end of the federally declared COVID-19 PHE and will apply in all locations served by the demonstration for anyone impacted by COVID-19 who receives HCBS through the demonstration. We have included the approved Attachment R pages with this correspondence.

If you need assistance, feel free to contact your Project Officer, Rabia Khan at (410) 786-6276 or by e-mail at Rabia.Khan1@cms.hhs.gov.

Sincerely,

**Angela D.
Garner -S**

Digitally signed by Angela
D. Garner -S
Date: 2022.02.24 15:19:58
-05'00'

Angela D. Garner

Director

Division of System Reform Demonstrations

Enclosure

cc: Gilson DaSilva, State Monitoring Lead, Medicaid and CHIP Operations Group

APPENDIX K: Emergency Preparedness and Response and COVID-19 Addendum

Background:

This standalone appendix may be utilized by the state during emergency situations to request amendments to its approved waiver, to multiple approved waivers in the state, and/or to all approved waivers in the state. 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 applied retroactively as needed by the state. Public notice requirements normally applicable under 1915(c) do not apply to information contained in this Appendix.

Appendix K-1: General Information

General Information:

A. State: Vermont

B. Waiver Title(s): Global Commitment to Health Section 1115 Demonstration; Choices for Care (CFC) and Special Programs, as indicated in STC 20(c): Traumatic Brain Injury, Mental Illness Under 22, Community Rehabilitation and Treatment, and Developmental Disability Services

C. Control Number(s): 11-W-00194/1

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

<input checked="" type="checkbox"/>	Pandemic or Epidemic
<input type="checkbox"/>	Natural Disaster
<input type="checkbox"/>	National Security Emergency
<input type="checkbox"/>	Environmental
<input type="checkbox"/>	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.

COVID-19 pandemic. This amendment will apply across Vermont's 1115 waiver for CFC and Special Programs, as indicated in Section B, to all individuals impacted by the virus or the response to the virus (e.g. closure of day programs, etc.)

This Attachment R was originally approved with an end date of 1/26/2021. The flexibilities below that do not have an explicit end date will be extended until no later than six months after the expiration of the Public Health Emergency.

F. Proposed Effective Date: Start Date: January 27, 2020 Anticipated End Date: No later than six months after the expiration of the Public Health Emergency.

G. Description of Transition Plan.

All activities will take place in response to the impact of COVID-19 as efficiently and effectively as possible based upon the complexity of the change.

H. Geographic Areas Affected:

These actions will apply across CFC and Special Programs, as indicated in Section B, to all individuals impacted by the COVID-19 virus.

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. 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]

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]:

*Please note that this flexibility was never implemented because it was found to be not necessary.

Residential Habilitation, including Adult Family Care (also known as Shared Living) and Enhanced Residential Care Home services, Residential Treatment Facilities, and other licensed residential programs (also known as group home or staffed living) may be provided in alternative settings when the participant is displaced from their home because of quarantine or hospitalization or when providers are unavailable due to illness or business closure during the COVID-19 emergency, at the State's discretion. Examples of alternative settings where services may be provided include hotels, shelters, churches, vacant settings (e.g. school, day care, senior center, adult day program) or alternative facility-based settings or the home of a direct care worker.

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

c. X 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.

Temporarily permit payment for services rendered by family caregivers or legally responsible individuals in lieu of care that would have been provided by paid caregivers, within the limits of the existing plan of care, as the State determines necessary. Applicable services by program include:

Choices for Care: personal care, companion, respite
Developmental Disability Services: respite, residential habilitation, and day habilitation
Traumatic Brain Injury Program: respite, life skills aid, community supports

Case management monitoring and oversight of care plans and service delivery will remain in effect during the emergency.

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]

Suspend or extend requirements for level of care re-evaluation and/or annual review of continued clinical eligibility, as the State determines necessary.

This flexibility ended on 1/1/2021 for the following programs: Community Rehabilitation and Treatment, and Mental Illness Under 22.

This flexibility ended in August 2020 for the following programs: Choices for Care and Traumatic Brain Injury.

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 State may modify timeframes for completing or revising individual service plans and may allow retroactive approval for service needs identified to mitigate harm or risk directly related to COVID-19 impacts, as the State determines necessary. The State will ensure the service plan is modified to allow for additional supports and/or services to respond to the COVID-19 pandemic. The specificity of such services including amount, duration and scope will be appended in as soon as possible but no later than sixty (60) days from the date the service was initiated to ensure that the specific service is delineated according to the date it began to be received.

This flexibility ended on 1/1/2021 for the following programs: Community Rehabilitation and Treatment, and Mental Illness Under 22.

This flexibility ended in August 2020 for the following programs: Choices for Care and Traumatic Brain Injury.

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. 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.]

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*]:

GC Specialized Program Services as indicated in Attachment D and Attachment E of the Global Commitment to Health Demonstration Waiver: service coordination, community supports (less than 24-hour), skilled therapy services, flexible supports, counseling, respite*, supported employment, crisis supports**, and clinical interventions***.

Only those services deemed as non-essential and clinically appropriate may be provided via telehealth, which includes audio-only service delivery. Essential services are required to be delivered in-person to assure the health and safety of a person. Non-essential services are permitted to continue if alternative, remote methods of delivery were available and clinically appropriate to provide via telehealth. The determination of delivery via telehealth must be made by the provider of services and is based on individual need and level of risk.

Health Care Administrative Rule 3.101 on telehealth indicates that HIPAA compliance is one of the conditions for coverage. Provider communications reference both this telehealth rule and the 3/17/2020 announcement from the Office for Civil Rights regarding its enforcement discretion.

Providers are expected to take appropriate steps to establish the provider-patient relationship and conduct all appropriate evaluations and history of the beneficiary consistent with traditional standards of care. Providers are expected to meet or exceed state and federal requirements for medical and health information privacy, including compliance with HIPAA. As part of an individual's informed consent, provided in a language that the beneficiary understands, the case management provider must establish that: conditions are appropriate for a telehealth encounter, including that the patient is not in need of alternative care given the patient's current status; security measures have been taken with the use of telemedicine technologies to ensure patient safety and privacy; and an emergency protocol exists for when care indicates that acute or emergency treatment is necessary for the safety of the patient.

Through quality oversight such chart reviews and ongoing monitoring meetings with agency directors, providers are monitored to ensure that they were taking steps to confirm the health and safety of individuals being served, which could include observations like the room/home is clean and safe and the individual has no injuries/bruising, through video chat and/or a phone conversation.

*Respite: The Department of Mental Health established protections regarding informed consent, assurance of the health and safety of the person being served, and appropriate documentation in the clinical record. Additionally, respite for children may only be provided via telehealth when there is a family member in the home. Mandated reporting requirements have remained in place during the public health emergency.

As with all services, respite providers are acting within the scope of their practice and are not endangering patients in delivering services to them. In the midst of the COVID-19 crisis, respite has been provided as an activity break and as an effort maintain a connection and engagement with the child; not as a child care activity.

**Crisis supports: Some crisis support services have been deemed to be essential, including crisis stabilization, hospital diversion programs, and intensive supports. Other crisis supports, to the extent they could be provided in a clinically appropriate way without compromising the health and safety of the individual being served, could be provided via telehealth to reduce the possible spread of COVID-19.

***Clinical interventions: clinical interventions are considered to be non-essential services that could be provided via telehealth when clinically appropriate, such as health risk assessments, brief emotional/behavioral risk assessments, medication therapy management assessments, and non-acute therapy. These services must meet clinically accepted standards of medical practice and delivery methods that are considered effective in providing health care services to patients, including for purposes of evaluation, diagnosis, consultation, or treatment.

- 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.

N/A

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: Wendy
Last Name: Trafton
Title: Deputy Director of Health Reform
Agency: Agency of Human Services
Address 1: 280 State Drive
Address 2: Click or tap here to enter text.
City: Waterbury
State: Vermont
Zip Code: 05671
Telephone: 802-585-4723
E-mail: Wendy.trafton@vermont.gov
Fax Number: Click or tap here to enter text.

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

First Name: Ashley
Last Name Berliner
Title: Director of Medicaid Policy
Agency: Department of Vermont Health Access
Address 1: 280 State Drive
Address 2: Click or tap here to enter text.
City Waterbury
State Vermont
Zip Code 05671
Telephone: 802-578-9305
E-mail Ashley.berliner@vermont.gov
Fax Number Click or tap here to enter text.

8. Authorizing Signature

Signature:

Date: 1/26/2021



State Medicaid Director or Designee

First Name: Cory
Last Name Gustafson
Title: Commissioner
Agency: Department of Vermont Health Access
Address 1: 280 State Drive
Address 2: Click or tap here to enter text.
City Waterbury
State VT
Zip Code 05671
Telephone: 802-585-0041
E-mail Cory.gustafson@vermont.gov
Fax Number Click or tap here to enter text.

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 that the state is temporarily modifying, enter the entire service definition and highlight the change. State laws, regulations and policies referenced in the specification should be readily available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

Service Specification					
Service Title:					
<i>Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:</i>					
Service Definition (Scope):					
Specify applicable (if any) limits on the amount, frequency, or duration of this service:					
Provider Specifications					
Provider Category(s) <i>(check one or both):</i>	<input type="checkbox"/>	Individual. List types:	<input type="checkbox"/>	Agency. List the types of agencies:	
Specify whether the service may be provided by <i>(check each that applies):</i>					
	<input type="checkbox"/>	Legally Responsible Person	<input type="checkbox"/>	Relative/Legal Guardian	
Provider Qualifications <i>(provide the following information for each type of provider):</i>					
Provider Type:	License <i>(specify)</i>	Certificate <i>(specify)</i>	Other Standard <i>(specify)</i>		
Verification of Provider Qualifications					
Provider Type:	Entity Responsible for Verification:		Frequency of Verification		
Service Delivery Method					
Service Delivery Method <i>(check each that applies):</i>	<input type="checkbox"/>	Participant-directed as specified in Appendix E	<input type="checkbox"/>	Provider managed	



ⁱ Numerous changes that the state may want to make may 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; or (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.