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November 7, 2023

George Failla  
Deputy Director  
Center for Medicaid and CHIP Services (CMCS)  
Western Division – Regional Operations Group  
Seattle Regional Office, 701 Fifth Ave., Ste. 1600  
Seattle, WA 98104

Dear Mr. Failla:

The State of Idaho is submitting for review and approval an amendment to the 1115 Research and Demonstration Waiver, Project Number 11-W-00339/10, to add a Family Personal Care Services (FPCS) benefit which would allow exemption from the regulatory prohibition in [42 C.F.R. § 440.167 Personal care services](#) restricting legally responsible individuals from providing personal care services. This exemption to allow FPCS promotes the objectives of Medicaid.

The Department is requesting an effective date of November 11, 2023.

Idaho appreciates your review of this waiver amendment application and anticipates CMS approval. Please direct any questions to William Deseron, Medicaid Program Manager, at (208) 859-0046 or by e-mail at [William.Deseron1@dhw.idaho.gov](mailto:William.Deseron1@dhw.idaho.gov).

Sincerely,

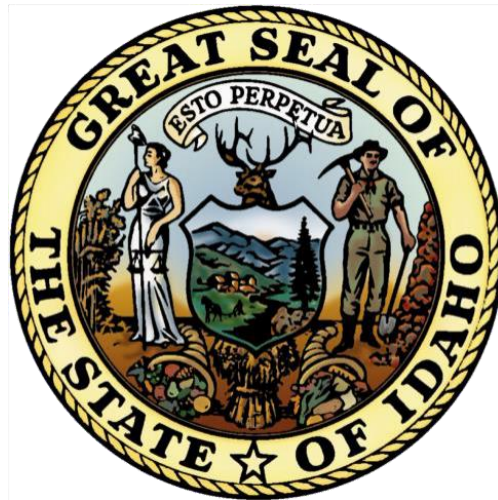


JULIET CHARRON  
Administrator

JC/db

cc: Courtenay Savage

# Idaho Department of Health and Welfare



**Section 1115 Medicaid Waiver Demonstration Amendment Request:  
Family Personal Care Service (FPCS) Benefit**

**November 6, 2023**

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## Section I. Background and Overview

Effective November 12, 2023, the State Medicaid Agency is requesting an amendment to the 1115 Research and Demonstration Waiver, Project Number 11-W-00339/10, to add a Family Personal Care Services (FPCS) benefit which would allow exemption from the limitations in 42 CFR 440.167 restricting legally responsible individuals (LRI) from providing personal care services (PCS). Idaho defines an LRI as a parent (adoptive or biological) of a minor child, or a spouse. The added service would grant authority for payment for PCS rendered by an LRI providing that the state meets all existing requirements for PCS as described under Idaho's 1937 Medicaid and CHIP Alternative Benefit Plans and Attendant Care as described under the 1915(c) Idaho Home and Community Based Services (HCBS) Aged & Disabled (A&D) waiver (ID.1076), including Electronic Visit Verification (EVV) requirements.

The goal of this amendment is to improve availability of PCS to individuals who qualify for this service but are unable to obtain these services due to direct care worker shortages. The state agency intends to utilize the demonstration authority to continue to allow for this flexibility to support access to direct care staff, person-centered planning, and gather data and information to support the application of an alternate authority with the expiration of the demonstration waiver in March of 2025. This demonstration will serve as a pilot to determine how the state will structure the benefit ongoing among existing or new authorities. Further, the state intends to form a workgroup comprised of stakeholders to include but not limited to family stakeholders, advocacy groups, provider representation, and state staff to continue to evaluate future approaches to address this benefit design ongoing with the intent to amend this or an alternate authority with the demonstration waiver expiration. This group will begin to meet in January 2024 on a regular cadence.

Prior to the COVID-19 Public Health Emergency (PHE), the State Medicaid Agency did not permit LRIs to provide PCS to their spouses or minor children in accordance with the limitation described in 42 CFR 440.167. The PHE necessitated new innovations and service delivery models to ensure beneficiaries continued to receive services. Issues in service delivery due to the PHE included efforts to mitigate COVID-19 exposure such as family decisions to not allow direct care workers into their homes and direct care workers deciding not to work in home settings. As a result, Idaho allowed temporary flexibility to LRIs to provide PCS to their minor children and spouses. This flexibility was applied for and approved through an 1135 Disaster State Plan Amendment, an Appendix K: COVID-19 Addendum, and a COVID-19 1115 Research and Demonstration Amendment. All federal authority to allow this flexibility expires on November 11, 2023. Upon careful review of this authority with State Medicaid Agency staff and a significant amount of external stakeholder interest, Idaho has determined the need to make this an ongoing flexibility. The State Medicaid Agency is requesting to add an FPCS benefit to address continuing direct care workforce shortages throughout the state.

Nationwide, there is a direct care workforce shortage.<sup>1,2</sup> [MACPAC's March 2022 Issue Brief – State Efforts to Address Medicaid Home and Community Based Services Workforce Shortages](#) describes the data for the shortage:

Despite limited data to quantify the extent of the shortage, there is evidence that an insufficient supply of HCBS workers has led to providers being unable to take on new clients, vacancies in the workforce, and unmet beneficiary need. A 2021 survey of HCBS agencies found that 77 percent have turned away new referrals, 58 percent have discontinued certain programs or services, and 84 percent have delayed programs due to staffing shortages (pg. 4).

In Idaho, the state is currently experiencing challenges in most geographic areas with maintaining a sufficient and quality direct care workforce to serve the needs of beneficiaries. The reimbursement rate and provider administrative burden have been identified as key factors in this shortage per [Idaho Legislature's Office of Performance Evaluations \(OPE\) Report - Sustainability of Idaho's Direct Care Workforce](#) published in March of 2023. Rates for these providers were mostly recently increased in July 2020 to account for implementation of Electronic Visit Verification (EVV) and again in July 2022. There has not been a measurable change in the workforce since the rate increases.

As a result of the direct care workforce shortage, Idaho has found itself in extraordinary circumstances. LRIs have been faced with several challenges including lack of other providers who are available to serve the beneficiary during periods when the LRI would otherwise be absent from the home such as for employment. The LRI must then remain in the home to care for their minor child or spouse. This has created a dependence on LRIs to provide activities that family caregivers would not ordinarily perform.

The state surveyed Idaho Medicaid enrolled Personal Assistance Agencies (PAAs) in December of 2022 to determine how many beneficiaries currently use this flexibility. The following table shows the average annual number of Idaho Medicaid beneficiaries who received PCS under Fee-for-Service for Federal Fiscal Years 2019 through 2022, and the estimation of how many of those receiving services are using a spouse or parent direct care worker.

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<sup>1</sup> Fox-Grage, E. T., Wendy. (2022, November 4). *State Strategies to Support Family and Professional Caregivers*. NASHP. <https://nashp.org/state-strategies-to-support-family-and-professional-caregivers/>

<sup>2</sup> Swanson-Aprill, L., Ma, C., Luz, A., Travis, J., Hunt, S., & Wamsley. (2019). *Policy Brief Direct Care Workforce Shortage*. [http://www.advancingstates.org/sites/nasud/files/DCW\\_Policy\\_Brief\\_FINAL\\_December\\_2019\\_675918\\_7.pdf](http://www.advancingstates.org/sites/nasud/files/DCW_Policy_Brief_FINAL_December_2019_675918_7.pdf)

Population Demographic	PCS State Plan Population	A&D HCBS 1915(c) Attendant Care Population	Estimated Currently Using a Spouse or Parent Direct Care Worker	Spouse/Parent Direct Care Worker Percentage
Minor Children	687	N/A	269	39.2%
Adults	551	7418 (also access PCS State Plan Benefit)	31	<0.004%

The PHE flexibilities in place until November 11, 2023, do not require any additional oversight, than what is in place currently for existing providers. With the proposed FPCS benefit, Idaho intends to implement additional oversight and screening with this flexibility as part of the demonstration. This is a reasonable and prudent step to protect the health and safety of vulnerable beneficiaries and ensure services are being provided effectively. Idaho will develop policies and procedures to identify when a beneficiary’s situation constitutes extraordinary circumstance and that the provision of PCS by an LRI is in the best interest of the beneficiary. In this demonstration, Idaho is proposing “extraordinary care” be defined as care that exceeds the range of activities that a parent of a minor child or spouse would ordinarily perform in the household on behalf of the recipient. The following requirements will support the allowance and oversight of LRI direct care staff providing this “extraordinary care.”

- The beneficiary has attempted to arrange for a non-LRI PCS direct care worker to provide the needed services as determined by a State Medicaid Agency assessment and has been unsuccessful.
- The requested LRI direct care worker meets all existing qualifications to become a PCS provider in alignment with existing standards for state plan PCS and Attendant Care services.
- The LRI direct care workers agree to abide by all oversight requirements from the hiring agency and the Idaho Department of Health & Welfare, Division of Medicaid. Failure to do so will result in termination of their ability to continue to provide services to a minor child or spouse under any agency provider, as with all other direct care staff employed by a PAA.
- The medically necessary care activities exceed the range of activities that an LRI would ordinarily perform, if the beneficiary did not have a disability or chronic illness.
- The requested services being provided by an LRI are in the best interest, health, and safety of the beneficiary.

In addition to addressing direct care workforce shortages throughout the state, this demonstration also seeks to ensure delivery of medically appropriate services in the community and promote positive health and wellbeing outcomes for the target population. When beneficiaries do not have access to PCS, they may not receive care, rely on family members to provide care with limited to no training, or be required to access higher levels of care at a higher cost to the state. The lack of care or trained caregivers may result in the decline of beneficiaries’ medical conditions.

**Idaho hypothesizes that this demonstration will sustain the likelihood of the beneficiary remaining in their home, increase the family's ability to effectively address the needs of the beneficiary, improve healthcare outcomes and maintenance of healthcare conditions, yield cost-effective care, and increase beneficiary satisfaction with care.**

Under this proposal, LRIs who provide these services must meet all existing direct care worker requirements as established by State Medicaid Agency policy including employment by a State Medicaid Agency enrolled PAA and training in essential caregiving activities such as beneficiary confidentiality, care plan implementation, RN-delegated tasks, transfers, toileting, and more. Additionally, obtaining employment with a PAA requires that LRIs maintain compliance with Electronic Visit Verification (EVV) requirements as established by Idaho Administrative Code (IDAPA) per the 21st Century Cures Act (Cures Act). The services and number of authorized hours will be assessed and determined through the State Medicaid Agency's current established assessment process with a nurse reviewer. A plan of care will be established through a person-centered planning process with the chosen PAA. The person-centered service planning process includes a determination of what activities will be provided by unpaid supports, the beneficiary's service delivery and preferences, risk factors, and more. This process also includes decisions about the individuals who will serve as direct care workers such as using LRIs when all other options have been exhausted, evaluation that the LRI is willing and able to provide paid care and is in the best interest of the beneficiary's health and safety. The person-centered planning process should maximize beneficiary-direction and support the beneficiary to make informed decisions and participate in the process to the fullest extent possible.

## **Section II: Description of the Amendment**

### **A. Proposed Cost Sharing Requirements under the Demonstration as Amended:**

There will be no premium, enrollment fee, or similar charge, or cost-sharing (including copayments and deductibles) required of individuals who will be enrolled in this demonstration that varies from the state's current Medicaid State Plan.

### **B. Proposed Changes to the Delivery System under the Demonstration as Amended:**

The health care delivery system for the provision of services under this demonstration will be implemented in the same manner as under the state's current and approved Medicaid State Plan and 1915(c) A&D Waiver.

### **C. Proposed Changes to Benefit Coverage under the Demonstration as Amended:**

This demonstration is requesting to add a new FPCS benefit to Idaho's 1115 Research and Demonstration Waiver, Project Number 11-W-00339/10. Specifically, this demonstration action tests whether an exemption from the regulatory prohibition in [42 C.F.R. § 440.167 Personal care services](#) promotes the objectives of the Medicaid program by allowing LRIs to render the proposed benefit. The FPCS benefit will replicate Idaho's current approved State Plan PCS 1937 benefit and Idaho's HCBS A&D 1915(c) Waiver Attendant Care benefit with the exception that the service will be provided by an LRI. The existing service activities and procedural requirements such as EVV and provider supervision will continue along with additional requirements.

Idaho defines this benefit as personal and medically oriented tasks dealing with the functional needs of the beneficiary and accommodating the beneficiary's needs for long-term maintenance, supportive care, or activities of daily living (ADL). These services may include personal assistance and medical tasks that can be done by unlicensed persons or delegated to an unlicensed person by a health care professional or the beneficiary. Services are based on the person's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. This assistance may take the form of hands-on assistance (performing a task for the person) or cuing to prompt the beneficiary to perform a task.

**D. Proposed Changes to Eligibility Requirements as Amended:**

This benefit will be offered to current Social Security Act Title XIX, XXI, and XVI Medicaid or CHIP State Plan beneficiaries. The state currently provides personal care services (PCS) through the Idaho Medicaid and CHIP State Plans and by extension through the 1915(c) HCBS A&D waiver. Individuals seeking FPCS will need to meet the minimum eligibility requirements under these authorities. In addition, an individual will need to demonstrate to the state all the following:

- A minimum of two unsuccessful attempts to obtain PCS or Attendant Care services from providers that are not LRIs.
- Requested LRI is capable of providing the service.
- The LRI direct care worker agrees to abide by all oversight requirements from the hiring PAA and the Idaho Department of Health & Welfare, Division of Medicaid. Failure to do so will result in termination of their ability to continue to provide services to a minor child or spouse under any agency provider.
- Medically necessary care activities exceed the range of activities that an LRI would ordinarily perform, if the beneficiary did not have a disability or chronic illness.
- Services are in the best interest, health, and safety of the beneficiary; and
- The plan of care developed by the PAA meets person-centered planning requirements.

The state commits to ensuring all eligibility requirements will continue to be met through an annual application, review process and ongoing oversight. Upon initial application and annual redetermination for FPCS, LRIs must complete and sign an attestation that they agree to follow all of the above requirements; service delivery quality and documentation standards must be met; the arrangement may be revoked if there is a health or safety issue; and they have reviewed The False Claims Act (31 U.S.C. §§ 3729 – 3733) and acknowledge that they are responsible for accurate service delivery and documentation. To ensure comprehensive oversight of service delivery and quality, the state will require that PAAs update their quality assurance plans to include quarterly onsite supervisory visits of all beneficiaries accessing this service and a description of how adequate RN oversight is conducted for participants using the LRI to deliver care; this will be submitted and reviewed quarterly by the Idaho Medicaid Bureau of Long-Term Care. Any LRIs terminated from a PAA for non-compliance will be reported immediately to the Idaho Medicaid Bureau of Long-Term Care. Non-compliance will result in the LRI no longer being able to provide direct care



services under any PAA ongoing. PAAs will be required to keep the approval notice with the service plan and submit quarterly update forms to the State Medicaid Agency to validate compliance.

Idaho School Districts and the Idaho Department of Education do not support parents delivering PCS in the schools and do not support such allowance; therefore, the proposed FPCS benefit will not be offered as a School-Based service.

### **Section III: Expenditure Authority**

Under the authority of section 1115(a)(2) of the Social Security Act (the Act), expenditures made by the state for the items identified below, which are not otherwise included as expenditures under section 1903 of the Act shall, for the duration of this demonstration.

**1. Use of Legally Responsible Individuals to Render Personal Care Services (PCS).** To allow temporary payment for 1905(a) personal care services rendered by legally responsible individuals (which could be inclusive of legally responsible family direct care workers) providing that the state meets all existing requirements as described under the Medicaid state plan, including Electronic Visit Verification requirements

### **Section IV: Expected Impact on Budget Neutrality**

#### **A. Expenditure Projection:**

The state projects that the total aggregate expenditures under this 1115 Research and Demonstration Waiver demonstration are \$21,981,452. However, the state expects these expenditures would decrease by the same amount through the 1905(a) Idaho Medicaid State Plan and 1915(c) HCBS Aged and Disabled Waiver, as these individuals will no longer be accessing the replicated PCS benefit under those authorities. As a result, this proposal will not have a material impact on the state's budget neutrality model for demonstration number 11-W-00339/10.

Budget Neutrality Summary

Without-Waiver Total Expenditures

	DEMONSTRATION YEARS (DY)					TOTAL
	DY 01	DY 02	DY 03	DY 04	DY 05	
<u>Medicaid Populations</u>						
Medicaid Pop 1 A&D Waiver	\$ 31,888,867	\$ 35,493,136	\$ 39,504,796	\$ 43,969,626	\$ 48,939,447	\$ 199,795,872
Medicaid Pop 2 State Plan	\$ 12,520,411	\$ 13,935,623	\$ 15,510,801	\$ 17,263,921	\$ 19,215,084	\$ 78,445,840
Medicaid Pop 3						
<u>DSH Allotment Diverted</u>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<u>Other WOW Categories</u>						
Category 1						\$ -
Category 2						\$ -
<b>TOTAL</b>	<b>\$ 44,409,278</b>	<b>\$ 49,428,759</b>	<b>\$ 55,015,597</b>	<b>\$ 61,233,547</b>	<b>\$ 68,154,531</b>	<b>\$ 278,241,712</b>

With-Waiver Total Expenditures

	DEMONSTRATION YEARS (DY)					TOTAL
	DY 01	DY 02	DY 03	DY 04	DY 05	
<u>Medicaid Populations</u>						
Medicaid Pop 1 A&D Waiver	\$ 31,888,867	\$ 35,493,136	\$ 39,504,796	\$ 43,969,626	\$ 48,939,447	\$ 199,795,872
Medicaid Pop 2 State Plan	\$ 12,520,411	\$ 13,935,623	\$ 15,510,801	\$ 17,263,921	\$ 19,215,084	\$ 78,445,840
Medicaid Pop 3						
<u>Expansion Populations</u>						
Exp Pop 1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Exp Pop 2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<u>Excess Spending From Hypotheticals</u>						\$ -
<u>Other WW Categories</u>						
Category 3						\$ -
Category 4						\$ -
<b>TOTAL</b>	<b>\$ 44,409,278</b>	<b>\$ 49,428,759</b>	<b>\$ 55,015,597</b>	<b>\$ 61,233,547</b>	<b>\$ 68,154,531</b>	<b>\$ 278,241,712</b>
<b>VARIANCE</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

HYPOTHETICALS ANALYSIS

Without-Waiver Total Expenditures

	DEMONSTRATION YEARS (DY)					TOTAL
	DY 01	DY 02	DY 03	DY 04	DY 05	
Hypo 1	\$ 308,971	\$ 357,766	\$ -	\$ -	\$ -	\$ 666,737
Hypo 2	\$ 3,473,653	\$ 3,704,476	\$ 4,369,523	\$ 4,698,330	\$ 5,068,731	\$ 21,314,714
<b>TOTAL</b>	<b>\$ 3,782,625</b>	<b>\$ 4,062,243</b>	<b>\$ 4,369,523</b>	<b>\$ 4,698,330</b>	<b>\$ 5,068,731</b>	<b>\$ 21,981,452</b>

With-Waiver Total Expenditures

	DEMONSTRATION YEARS (DY)					TOTAL
	DY 01	DY 02	DY 03	DY 04	DY 05	
Hypo 1	\$ 308,971	\$ 357,766	\$ -	\$ -	\$ -	\$ 666,737
Hypo 2	\$ 3,473,653	\$ 3,704,476	\$ 4,369,523	\$ 4,698,330	\$ 5,068,731	\$ 21,314,714
<b>TOTAL</b>	<b>\$ 3,782,625</b>	<b>\$ 4,062,243</b>	<b>\$ 4,369,523</b>	<b>\$ 4,698,330</b>	<b>\$ 5,068,731</b>	<b>\$ 21,981,452</b>
<b>HYPOTHETICALS VARIANCE</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

**B. Enrollment Impact:**

This demonstration will not impact the eligibility or enrollment of Medicaid beneficiaries. The State Medicaid Agency projects that approximately 1032 individuals as described in Section II will be eligible for the period of the demonstration.

**Section V: Evaluation Design**

Idaho’s 1115 Waiver Evaluation design will be modified to incorporate the FPCS demonstration proposal. The table below outlines the proposed hypotheses for this 1115 Waiver amendment and potential performance measures that would allow Idaho to effectively test each of the specific hypotheses.

Objectives	Proposed Hypotheses	Potential Approaches
The Idaho 1115 FPCS benefit demonstration will increase beneficiary satisfaction, ensure delivery of medically appropriate services in the community, and promote positive health and wellbeing outcomes for the target population.	The Idaho 1115 FPCS benefit demonstration will be cost-neutral for the target population.	Data will be drawn from a variety of sources including but not limited to: <ul style="list-style-type: none"> <li>• Beneficiary surveys,</li> <li>• Provider surveys,</li> <li>• State eligibility and enrollment data,</li> <li>• Claims data,</li> <li>• Quality assurance data submitted on a quarterly basis by PAAs.</li> </ul>
	The Idaho 1115 FPCS benefit demonstration will increase beneficiary satisfaction with care.	
	The Idaho 1115 FPCS benefit demonstration will preserve a supportive environment and sustain the likelihood of beneficiaries remaining in home or community-based setting.	

Idaho will develop and submit to CMS a summative evaluation report within eighteen (18) months of the end of the current Demonstration period. Included in this summative evaluation report will be a discussion on the impacts resulting from payment to LRIs as paid direct care workers.

**Section VI: Public Notice Process and Input Summary**

Pursuant to the terms and conditions that govern Idaho’s Demonstration, Idaho must provide documentation of its compliance with the state notice procedures set forth in 59 Fed. Reg. 49249 (September 27, 1994). The state must also comply with tribal and Indian Health Program/Urban Indian Organization consultation requirements at section 1902(a)(73) of the Act as amended by Section 5006(e) American Recovery and Reinvestment Act of 2009, 42 CFR 431.408(b), State Medicaid Director Letter #01-024, or as contained in the state’s approved Medicaid State Plan.

Tribal solicitation and public notice were completed by scheduling three (3) public hearings, each two (2) hours long (October 10, October 27, and November 1, See Appendix B). At these hearings the most recent working proposal was described and made available to the public, and time was provided during which comments were received. The state also accepted written comments from these hearings from October 10 through November 3, 2023.

All Public hearing recordings and comment details can be found at the following link:

<https://publicdocuments.dhw.idaho.gov/WebLink/Browse.aspx?id=27320&dbid=0&repo=PUBLIC-DOCUMENTS>

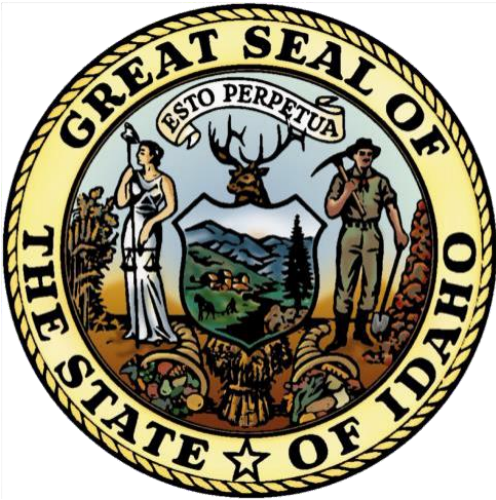
A summary of all comments received and responses have been included in this application in Appendix A.

#### STATE CONTACT

State Medicaid Director Name: Juliet Charron  
Telephone Number: (208) 364-1831  
E-mail Address: [Juliet.Charron@dhw.idaho.gov](mailto:Juliet.Charron@dhw.idaho.gov)

State Lead Contact for Demonstration Application: David Bell  
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# Idaho Department of Health and Welfare



## APPENDIX A Comments and Responses

**APPENDIX A: PUBLIC COMMENT SUMMARY**

An estimated 126 people commented during Idaho’s public comment period for this amendment. The following is a summary of those comments:

<b>1115 Demonstration Waiver for Family Personal Care Services Comment and Response Document</b>	
<b>Comments/Questions</b>	<b>Responses</b>
Many commenters shared personal stories concerning their family situations and the extent for which they provide care for their child or spouse.	The Department thanks the commenters for sharing their experiences.
A commenter asked, “How will we know if our child or spouse falls into the extraordinary circumstances requirement?”	A participant must meet existing medical necessity criteria for State Plan Personal Care Services (PCS) and/or Attendant Care under the Aged and Disabled Waiver program. Medical necessity for these services is determined by the Bureau of Long-Term Care (BLTC).
A commenter asked, “Is there a way for agencies who do not have staff available to make this known on the list (so they aren't having to field so many calls/inquiries from families)?”	This is not feasible for the Department to implement.
Six commentors expressed concern about the time frame for the State to process an application for family personal care services during the transition period.	Households are encouraged to apply promptly after the request form and process is published to avoid a lapse in services. The Department will make every effort to ensure that requests are processed timely. Our goal is to minimize disruptions in care and will work with PAAs and families to mitigate any disruption.
A commenter asked, “Is this service only going to be under fee for service? What about Blue Cross or Molina Healthcare? “	FPCS will be carved out of the duals’ programs. This means that whether or not a participant is enrolled with Blue Cross or Molina Healthcare, if the person is eligible for FPCS, those services will be authorized via the state and paid through Gainwell Technologies.
Three commenters asked “What if an agency is able to provide part of the hours with a direct care worker? Could the parent or spouse provide the other part?”	If an agency is unable to fulfill all of the PCS and/or Attendant Care hours the participant is eligible to receive, then that is considered “unavailable” to the family. The participant would be eligible for

**1115 Demonstration Waiver for Family Personal Care Services  
Comment and Response Document**

Comments/Questions	Responses
	family personal care services if they met all other requirements. Generally, FPCS and PCS benefits cannot be mixed as they are different benefits.
Thirty-two commenters asked, “How is Legally Responsible Individual (LRI) defined?” or encouraged the department to add legal guardian to the definition.	An LRI is a parent (adoptive/biological) of a minor child, or spouse of an adult participant. Legal Guardians and non-parents and non-spouse relatives are not considered LRIs and are not subject to the federal limitation to providing personal care services.
A commenter expressed concern about insurance rates going up for agencies with services provided by parents and spouses and asked if reimbursement rates will go up to ensure that agencies will be able to compensate for this expense?	Modifying service reimbursement is not within the scope of this 1115 application. The state will continue to evaluate any changes to cost and reimbursement for provider agencies.
Fourteen commenters expressed concern about reimbursement rates for personal care services being insufficient to retain staff.	Modifying service reimbursement is not within the scope of this 1115 application. 1115 demonstration waivers must be budget neutral. The state will continue to evaluate any changes to cost and reimbursement for provider agencies. .
A commenter was concerned if Gainwell Technologies would be ready to accept the V1 modifier on claims when the waiver begins so that there is no lapse in reimbursement.	Gainwell Technologies is already prepared to process claims with the V1 modifier.
Two commenters asked where they could apply to provide personal care services to their spouse or child.	The request form and process will be published in the coming weeks and distributed to stakeholders.
A commenter with an agency expressed concern about agencies promising workers to lure clients away.	Participants have a choice of which personal assistance agency they contract with.
A commenter expressed those participants already receiving care from a parent or spouse should be grandfathered in without needing to apply.	This is a new flexibility. The Department does not have a list or way of identifying those that would use this benefit without them applying for it. Individuals currently invoking this flexibility will therefore not be grandfathered in. The purpose of having a transition period is to

**1115 Demonstration Waiver for Family Personal Care Services  
Comment and Response Document**

Comments/Questions	Responses
	<p>allowing families adequate time to submit their requests.</p> <p>If a personal assistance agency currently employs a spouse or parent who is invoking with this flexibility, the agency will count as one attempt if they do not have other staff available to fulfill the participant's authorized needs. The requesting parent or spouse will need to indicate this in their request.</p>
<p>A commentor asked, "Why is it necessary for participants to lose out on access to case management staff through the dual enrollment program just because they have a parent or spouse is set up to provide part or all of the participants hours."</p>	<p>Duals participants do not lose access to case management. Participants eligible to receive FPCS who are duals will access FPCS separately from their other A&amp;D waiver and duals' program services. Those will continue to be administered by the managed care organization. The individual is not disenrolled from the duals' program to access FPCS.</p>
<p>Two commenters expressed concerned about lapse in service by a parent or spouse if a staff person becomes available.</p>	<p>Households will only have to submit a request once per year in alignment with the participant's annual redetermination assessment. If a direct care staff comes available outside of the annual redetermination, the household is not required to use the non-related care staff.</p>
<p>Forty-seven commenters expressed concern that the proposal is too complicated.</p>	<p>The Department believes this proposal applies the least amount of burden on providers and families while ensuring adequate monitoring and oversight.</p>
<p>A commenter inquired if it was the responsibility of the parents/spouses to reach out?</p>	<p>The request form and process will be published in the coming weeks and distributed to stakeholders.</p>
<p>Two commenters asked if their child is an adult, does the waiver apply?</p>	<p>Parents of adult children receiving services are not the subject of this 1115 demonstration waiver.</p>
<p>A commenter asked who is responsible for the verification of participant following up with 2 agencies?</p>	<p>It is the parent or spouse's responsibility to contact at least two agencies and document that contact, either by obtaining a signature from the agency or an e-mail from the agency stating no direct care staff are available to fulfill the participant's authorized services.</p>



**1115 Demonstration Waiver for Family Personal Care Services  
Comment and Response Document**

Comments/Questions	Responses
Seventy-two commenters asked about options if the family doesn't like the caregiver the personal assistance agency hires or if they aren't qualified to provide the service.	All direct care workers must be trained according to minimum standards established by the state. This includes special endorsements, such as using a hooyer lift or other specialized care. If a household has concerns about the training or skills of a direct care staff, they may problem-solve with the agency or report an issue to the Department at <a href="http://medicaidcomplaints.dhw.idaho.gov">http://medicaidcomplaints.dhw.idaho.gov</a> .
Thirty-nine commenters inquired if there was a way that the state can waive the certified family home requirement for providing care in home after the participant becomes 18 years old.	Certified Family Home licensure is not in the scope of this 1115 application.
Six commenters asked, "Can we fill PDN with this 1115?"	Private Duty Nursing is a distinct benefit that may only be provided by a Registered Nurse. PDN is not in the scope of this 1115 application. Medicaid-reimbursed skilled nursing services cannot be rendered by an individual who is not a Registered Nurse or Licenses Practical Nurse.
Five commenters asked, "In cases with families with multiple participants, how are families to work situation with over 40 hours? Are they supposed to be employed by multiple agencies?"	A parent may not provide and bill for multiple services rendered to more than one participant at a time. This is not permitted in the scope of PCS or Attendant Care Services and will not be permitted under the 1115 FPCS benefit. Caregivers may work over 40-hours with employment at a single agency.
Thirty-one commenters inquired if the waiver can be used to address the shortage of skilled nursing providers.	Skilled nursing services are not in the scope of this 1115 application.
Eighty-two commenters expressed frustration at having to look for a caregiver outside of the home. They stated that it wasn't a CMS requirement.	Participant preferences are honored to the extent possible in Idaho's home and community-based services. Participant preference cannot override or waive program standards and oversight requirements within the state's current capacity.

**1115 Demonstration Waiver for Family Personal Care Services  
Comment and Response Document**

Comments/Questions	Responses
Seventy-six commenters expressed concern with strangers coming into their homes and the revolving door of workers.	Participant preferences are honored to the extent possible in Idaho's home and community-based services. Preferences, however, cannot override or waive program standards and oversight requirements within the state's current capacity. If a household has concerns about a direct care staff, they may problem-solve with the agency or report issues to the Department at <a href="http://medicaidcomplaints.dhw.idaho.gov">http://medicaidcomplaints.dhw.idaho.gov</a> .
A commenter asked if family personal care services are available for participants at school?	The scope of this 1115 application does not include school-based services.
A commenter asked if participants will have to go through a new assessment by the Bureau of Long-Term Care for services.	Participants will remain on their current annual redetermination schedule. A new assessment will not be required.
A commenter asked, "Can these children and family members stay with their current plans through January 31, 2024, until approved with this new application?"	This is correct. The 1115 proposal includes a transition period allowing households up to January 31, 2024, to submit their request to provide FPCS.
A commenter inquired if they could call agencies now or if they have to wait until November 11th to begin calling to see if an agency has PCS available.	The request form and process will be published in the coming weeks and distributed to stakeholders. No action can be taken at this time.
A commenter inquired about how to find a PCS agency.	The Department has a provider directory available upon request by calling 877-799-4430. Participants can also search online at <a href="https://www.idmedicaid.com/mhpviewer.aspx?FID=PDIR">https://www.idmedicaid.com/mhpviewer.aspx?FID=PDIR</a> using specialty PCS/AGED & DISABLED SERVICE AGENCY.
Two commenters inquired where the application for parents/spouses will need to be submitted?	The request form and process will be published in the coming weeks and distributed to stakeholders.
A commenter asked, "When does the agency start submitting claims with the V1 modifier?"	Instructions for provider agencies will be made available in the coming weeks. Agencies do not need to take any action at this time.
Three commenters asked how long a demonstration waiver lasts.	A typical 1115 demonstration waiver period is five years. Demonstration waivers are ordinarily able to be renewed

**1115 Demonstration Waiver for Family Personal Care Services  
Comment and Response Document**

Comments/Questions	Responses
	after the initial five-year period. The current 1115 demonstration waiver ends March 2025.
Fifty-nine commenters expressed concerns about not being able to work with medically fragile child or spouse and this being their source of income.	While the Department appreciates the circumstances families find themselves in with having to provide care for their loved ones, the Medicaid program is not designed to supplement household income or to ensure employment for household members. The purpose of the Medicaid program is to provide coverage for medically necessary services to the Medicaid participant. The Department does not have authority to consider employment needs when making decisions for this program.
Two commenters asked, “Does this apply to Self-Direct, CSW parents?”	The 1115 does not apply to children’s developmental disability services. There are no changes to those programs.
A commenter asked, “Will the Support Brokers be informed/ trained on this matter and reach out to clients to help them through the application process?”	This 1115 application is specific to individuals receiving State Plan Personal Care Services (PCS) and/or Attendant Care on the Aged and Disabled Waiver program.
A commenter inquired if a PDF was available of the application.	The request form and process will be published in the coming weeks and distributed to stakeholders.
A commenter asked for clarification on what “available” meant for a caregiver.	An “available” direct care staff means a staff person that can fulfill all of the participant’s authorized hours, can commute to the individual’s home (in the case of rural or remote locations), and can reasonably accommodate the needs of the participant.
Three commenters expressed concern about not being able to leave participant alone with caregiver in the house.	This is not a requirement from the Department. If a household has concerns about a direct care staff, they may problem-solve with the agency or report issues to the Department at <a href="http://medicaidcomplaints.dhw.idaho.gov">http://medicaidcomplaints.dhw.idaho.gov</a> .

**1115 Demonstration Waiver for Family Personal Care Services  
Comment and Response Document**

Comments/Questions	Responses
Five commenters expressed that in their opinion family caregivers were more economical than hiring strangers.	The Department appreciates the comment.
Two commenters expressed frustration at not being included in the development of the 1115 demonstration waiver.	Currently, the Department only has a rough draft of the 1115 demonstration waiver. Public input was sought in its development through a written comment period and three public hearings.
A commenter asked if being an RN affected their status.	Regardless of the level or type of licensure, if the individual providing care is a parent of a minor child or a spouse of an adult participant, State Plan Personal Care Services and/or Attendant Care will be required to submit a request to transition to FPCS.
Two commenters expressed concern that Idaho is allowing felons to provide services if it has been 3 years since their crime.	This is outside the scope of the 1115 demonstration waiver. All felonies are a minimum 5-year disqualifier with the exception of felony DUI, and felony possession of a controlled substance or controlled substance paraphernalia offense, which are 3-year disqualifiers. There are many lifetime disqualifying crimes. A full list can be found at <a href="https://healthandwelfare.idaho.gov/bcu">https://healthandwelfare.idaho.gov/bcu</a> .
Five commenters expressed allowing parents to provide PCS would prevent more costly institutional level of care.	The 1115 demonstration waiver seeks to allow parents to provide personal care services.
Two commenters questioned whether a participant could receive FPCS and receive PCS/Attendant care from a non-LRI caregiver if they want to split the hours?	Generally, this would not be permissible. FPCS, Personal Care and Attendant Care services are prior authorized to the benefit being delivered. As these are different benefits, they are not interchangeable.
A commenter questioned if the agency be reimbursed for their time/cost of finding a caregiver if no caregiver is found? What recourse do participants have when agencies do not respond?	The agency is not reimbursed for looking for a caregiver. If an agency is non-responsive, the participant should contact an alternate agency.
A commenter asked if families report agencies for not allowing for participant preference, who will be managing all of these violations?	Participant preferences are honored to the extent possible in Idaho's home and community-based services. Participant

**1115 Demonstration Waiver for Family Personal Care Services  
Comment and Response Document**

Comments/Questions	Responses
	<p>preference cannot override or waive program standards and oversight requirements within the state’s current capacity. If a household has concerns, they may problem-solve with the agency or report issues to the Department at <a href="http://medicaidcomplaints.dhw.idaho.gov">http://medicaidcomplaints.dhw.idaho.gov</a>.</p>
<p>A commenter asked if agencies will be required to prove they are trying to hire enough employees for everyone?</p>	<p>The 1115 demonstration waiver does not have a requirement for agencies to increase their hiring efforts.</p>
<p>Two commenters expressed that this cannot be the only solution to the direct care work force shortage and other conversations need to happen.</p>	<p>Conversations will continue outside of the 1115 demonstration waiver. The Department acknowledges the nationwide shortage of direct care workers and is actively seeking solutions to this problem.</p>
<p>Seventeen commenters questioned what the department intends to do with public feedback beyond submitting to CMS?</p>	<p>The Department has reviewed all comments and feedback. All received input will be considered in the submission of the 1115 demonstration waiver. Changes were made to the waiver based on public feedback to create a stakeholder group to continue exploring these issues going forward.</p>
<p>One commenter questioned how will independent case management services provide oversight of the FPCS Benefit to ensure there is no conflict of interest?</p>	<p>Case management is only available for those under a Duals plan. At this time case management services are not part of the 1115 demonstration waiver. Demonstration waivers are required to be budget neutral and case management is currently not offered to the majority of this population.</p>
<p>One commenter encouraged the state to incorporate more robust quality measures to guarantee the care provided meets established standards.</p>	<p>The Department believes this proposal applies the least amount of burden on providers and families while ensuring adequate monitoring and oversight.</p>
<p>One commenter questioned how will the Department ensure there is no undue influence over people with disabilities?</p>	<p>Concerns about specific situations may be reported to <a href="http://www.medicicaidcomplaint.dhw.idaho.gov">www.medicicaidcomplaint.dhw.idaho.gov</a>.</p>
<p>Seventeen commenters expressed Juliet Charron, Administrator of Medicaid &amp; Chip for IDHW, has</p>	<p>The Department is required to consider the health and safety of the participant</p>

**1115 Demonstration Waiver for Family Personal Care Services  
Comment and Response Document**

Comments/Questions	Responses
<p>stated that there is a need for "extra oversight" of family caregivers because there have been "a couple" reported incidents of fraudulent behavior by family caregivers over the past few years. Commenters point out that families can provide endless accounts of abuse and/or fraud by outside caregivers, yet they are not subjected to this extra oversight or scrutiny. Commenters express the extra oversight established by IDHW for family caregivers due to the concern of bad behavior is both discriminatory and derogatory.</p>	<p>and provide for utilization management for every service it reimburses for. Given the different nature between legally responsible individuals (LRI), who live in the home and are there regardless of if they're providing a service, and non-LRI, who must commute to the home and check-in, different oversight must be established to ensure compliance with state and federal regulations. Other states allowing LRI to perform family personal care services employ case management services for this purpose. At this time, case management is not available to all participants accessing these services in Idaho.</p>
<p>One commenter requested that IDHW remove the requirement that LRI caregivers be required to complete all existing direct care worker requirements.</p>	<p>All direct care workers must be trained according to minimum standards established by the state. There will not be different requirements for LRI and non-LRI workers.</p>
<p>Multiple commenters expressed frustration with the lack of a 30-day written comment period and asserted that it was illegal.</p>	<p>A 30-day comment period is not required for amendment of an 1115 waiver. Public comments for amendments follow the <i>STC 7 Amendment Process</i> when developing an amendment application for public notice requirements, specifically <a href="#">59 Fed. Reg. 49249 (September 27, 1994)</a> (see pg. 6 of the linked pdf, section VII State Notice Procedures). In this case the state elected for three public hearings and a 24-day comment period instead of a 30-day comment period. A 30-day comment period would have been prohibitive to submitting the waiver application to the Centers for Medicare and Medicaid Services in time to prevent a lapse in services for participants and their caregivers.</p>

# Idaho Department of Health and Welfare



## APPENDIX B

### Waiver Amendment Public Notice



BRAD LITTLE – Governor  
DAVE JEPPESEN – Director

IDAHO DEPARTMENT OF  
**HEALTH & WELFARE**

JULIET CHARRON - Administrator  
DIVISION OF MEDICAID  
Post Office Box 83720  
Boise, Idaho 83720-0009  
PHONE: (208) 334-5747  
FAX: (208) 364-1811

September 19, 2023

**MEDICAID INFORMATION RELEASE MA23-15**

**To:** Personal Assistance Agencies

**From:** Juliet Charron, Administrator [REDACTED]

**Subject:** Personal Care Service (PCS) Reimbursement To Spouses Or Parents

Certain flexibilities in federal rules were granted to state Medicaid Agencies during the COVID-19 Public Health Emergency (PHE), intended to support access to services that may have otherwise become unavailable. One of those flexibilities has been the temporary waiving of a federal regulation ([42 C.F.R. § 440.167 Personal Care Services](#)), which prohibits certain individuals from being compensated by a state Medicaid Agency for providing personal care services (PCS) to a Medicaid participant, primarily certain family members. In Idaho, this is specific to spouses of participants and parents of minor children who are participants.

This emergency flexibility granted during the PHE expires for Idaho on November 11, 2023.

After further dialogue with the Centers for Medicare and Medicaid Services (CMS), the Department is pursuing Section 1115 Demonstration authority to continue to allow parents and spouses as paid PCS caregivers in extraordinary circumstances. As noted previously, there will be some different parameters applied compared to what is allowed today with the current flexibility in place. This will include meeting the extraordinary circumstances through an application process; regular reporting to provider agencies and Idaho Medicaid; and continued requirements expected from all PCS direct care staff.

The Department is working to get this in place by November to include a transition period for families. There are two (2) public comment hearings scheduled to review and discuss the proposal.

**Idaho Medicaid 1115 Demonstration Amendment Public Hearing - Parents and Spouses as Direct Care Staff for PCS**

**Tuesday October 10, 2023 3:00-5:00pm MST**

*Join from the meeting link*

<https://idhw.webex.com/idhw/j.php?MTID=mac88748b49636b2143abe475204ee8b4>



*Join by meeting number*

Meeting number (access code): 2760 187 8062

Meeting password: VJs3DVZJs82 (85733895 from phones and video systems)

*Tap to join from a mobile device (attendees only)*

[+1-415-527-5035,,27601878062#85733895](tel:+1-415-527-5035,,27601878062#85733895) United States Toll

[+1-303-498-7536,,27601878062#85733895](tel:+1-303-498-7536,,27601878062#85733895) United States Toll (Denver)

Some mobile devices may ask attendees to enter a numeric password.

*Join by phone*

+1-415-527-5035 United States Toll

+1-303-498-7536 United States Toll (Denver)

**Idaho Medicaid 1115 Demonstration Amendment Public Hearing - Parents and Spouses as Direct Care Staff for PCS**

**Wednesday October 18, 2023 7:00-9:00pm MST**

*Join from the meeting link*

<https://idhw.webex.com/idhw/j.php?MTID=m227d56b54184ecbe5e9a800e63b8bb7b>

*Join by meeting number*

Meeting number (access code): 2762 571 1984

Meeting password: 6haY3sJWZr8 (64293759 from phones and video systems)

*Tap to join from a mobile device (attendees only)*

[+1-415-527-5035,,27625711984#64293759](tel:+1-415-527-5035,,27625711984#64293759) United States Toll

[+1-303-498-7536,,27625711984#64293759](tel:+1-303-498-7536,,27625711984#64293759) United States Toll (Denver)

Some mobile devices may ask attendees to enter a numeric password.

*Join by phone*

+1-415-527-5035 United States Toll

+1-303-498-7536 United States Toll (Denver)

If you have any questions, please email [MCPT@dhw.idaho.gov](mailto:MCPT@dhw.idaho.gov).

Thank you for participating in the Idaho Medicaid Program.

JC/db

Information Release MA23-15

September 19, 2023

Page 3 of 3

*The content of this guidance document is not new law, but is an interpretation of existing law prepared by the Idaho Department of Health and Welfare to provide clarity to the public regarding existing requirements under the law. This document does not bind the public, except as authorized by law or as incorporated into a contract. For additional information or to provide input on this document, contact the Idaho Division of Medicaid by emailing [medicaidcommunications@dhw.idaho.gov](mailto:medicaidcommunications@dhw.idaho.gov) or by calling 208-334-5747.*



**Title:** 1115 Demonstration Amendment Public Hearing for Family Personal Care Givers  
**Entity:** Department of Health and Welfare  
**Date/Time:** Oct 27 2023 10:00AM  
**Category:** Public Hearing  
**Status:** Published

[Add to Calendar](#)

[Additional Meeting Information](#)

**Description**

1115 Demonstration Amendment Public Hearing for Family Personal Care Givers  
 10:00am-12:00pm, 10/27/2023, WebEx

This meeting is a public hearing for receiving comments on an amendment to the 1115 Demonstration Waiver to allow for Family Personal Care Services. Family Personal Care Services is defined as personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or activities of daily living (ADL) provided by a spouse or a parent of a minor child.

Join from the meeting link: <https://idhw.webex.com/idhw/j.php?MTID=m26464b9b68404a350083bf840de4d81f>  
 Join by phone: +1-415-527-5035 United States Toll  
 Join by meeting number  
 Meeting number (access code): 2761 738 5266  
 Meeting password: 3iBbX3nRkp7 (34229367 from phones and video systems)

[Virtual Location](#)

**Contact Information**

William Deseron  
 (208) 859-0046  
[William.Deseron1@dhw.idaho.gov](mailto:William.Deseron1@dhw.idaho.gov)  
<https://healthandwelfare.idaho.gov/about-dhw/public-meetings>

**Physical Location**

Virtual  
 no address  
 no address  
 no city, ID no zip cod



**Documents**

**Recordings**

**History**  
 10/20/2023 Published

PRESENTED BY:



Office of the Governor  
 State Capitol  
 PO Box 83720  
 Boise, ID 83720  
 Phone: (208) 334-2100  
 Fax: (208) 854-3036

IN PARTNERSHIP WITH:



Technical Support:

Phone: (208) 334-3100 opt. 0  
 Email: [townhallsupport@scsco.idaho.gov](mailto:townhallsupport@scsco.idaho.gov)

[Privacy Policy](#)



**Title:** 1115 Demonstration Amendment Public Hearing for Family Personal Care Givers  
**Entity:** Department of Health and Welfare  
**Date/Time:** Nov 1 2023 7:00PM  
**Category:** Public Hearing  
**Status:** Published

[Add to Calendar](#)

Additional Meeting Information

**Description**

1115 Demonstration Amendment Public Hearing for Family Personal Care Givers  
 7:00pm-9:00pm, 11/01/2023, WebEx

This meeting is a public hearing for receiving comments on an amendment to the 1115 Demonstration Waiver to allow for Family Personal Care Services. Family Personal Care Services is defined as personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or activities of daily living (ADL) provided by a spouse or a parent of a minor child.

Join from the meeting link: <https://idhw.webex.com/idhw/j.php?MTID=me7dabc9c984dbe5c617b1c872515635e>

Join by phone: +1-415-527-5035 United States Toll

Join by meeting number

Meeting number (access code): 2762 242 6173

Meeting password: P8MnmPimJ83 (78666746 from phones and video systems)

[Virtual Location](#)

**Contact Information**

William Deseron  
 (208) 859-0046  
[William.Deseron1@dhw.idaho.gov](mailto:William.Deseron1@dhw.idaho.gov)  
<https://healthandwelfare.idaho.gov/about-dhw/public-meetings>

**Physical Location**

Virtual  
 no address  
 no address  
 no city, ID no zip cod



**Documents**

**Recordings**

**History**  
 10/20/2023 Published

PRESENTED BY:



Office of the Governor  
 State Capitol  
 PO Box 83720  
 Boise, ID 83720  
 Phone: (208) 334-2100  
 Fax: (208) 854-3036

IN PARTNERSHIP WITH:

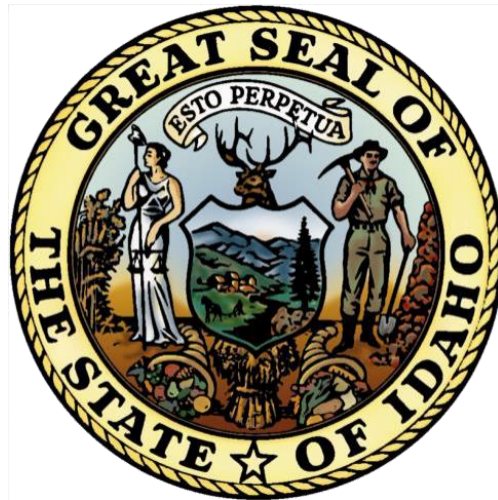


Technical Support:

Phone: (208) 334-3100 opt. 0  
 Email: [townhallsupport@SCO.idaho.gov](mailto:townhallsupport@SCO.idaho.gov)

[Privacy Policy](#)

# Idaho Department of Health and Welfare



## APPENDIX C

Waiver Amendment Public Hearing  
Agenda and Slides

# AGENDA

## Idaho Department of Health & Welfare – Division of Medicaid

### 1115 Demonstration Amendment Public Hearing for Family Personal Care Givers

Date: Friday, October 27, 2023

Time: 10:00 a.m. – 12:00 p.m. MDT (9:00 a.m. – 11:00 a.m. PDT)

#### Meeting Information:

##### Web-Ex Link:

<https://idhw.webex.com/idhw/j.php?MTID=m26464b9b68404a350083bf840de4d81f>

Meeting Number: 2761 738 5266

Event Password: 3iBbX3nRkp7

Dial-In Information (Phone Only)

Dial: +1 (415) 527-5035

Access Code (Meeting Password): 34229367

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10:00 a.m. to 10:05 a.m.	<b>Introduction and Overview</b> <ul style="list-style-type: none"><li>• Introductions and Housekeeping</li></ul>	William Deseron
10:05 a.m. to 10:20 a.m.	<b>Presentation</b> <ul style="list-style-type: none"><li>• Overview of 1115 Demonstration Waiver</li><li>• Overview of Operational Process</li></ul>	William Deseron
10:20 a.m. to 11:45 a.m.	<b>Public Testimony for 1115 Demonstration Waiver</b>	Stakeholders
11:45 a.m. to 12:00 p.m.	<b>Written Public Comments</b> Review of additional opportunities for stakeholder comments.	William Deseron

---

#### Key Points:

- The Idaho State Medicaid Agency is requesting from the Centers of Medicare and Medicaid Services (CMS) an amendment to the 1115 Research & Demonstration Waiver, Project Number 11-W-00339/10 to allow reimbursements to spouses and parents for personal care services.
- This meeting is a public hearing for receiving comments on an amendment to the 1115 Demonstration Waiver to allow for Family Personal Care Services.
- Family Personal Care Services is defined as personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or activities of daily living (ADL) provided by a spouse or a parent of a minor child.
- Please submit additional feedback by close of business on **Thursday, November 2**. Please, submit your written comments by E-mail: [MCPT@dhw.idaho.gov](mailto:MCPT@dhw.idaho.gov). Please, include **1115 Demonstration Waiver** in the **Subject Line**.

# AGENDA

## Idaho Department of Health & Welfare – Division of Medicaid

### 1115 Demonstration Amendment Public Hearing for Family Personal Care Givers

Date: Wednesday, November 1, 2023

Time: 7:00 p.m. – 9:00 p.m. MDT (6:00 p.m. – 8:00 p.m. PDT)

#### Meeting Information:

##### Web-Ex Link:

<https://idhw.webex.com/idhw/j.php?MTID=me7dabc9c984dbe5c617b1c872515635e>

**Meeting Number:** 2762 242 6173

**Event Password:** P8MnmPimJ83

##### Dial-In Information (Phone Only)

**Dial:** +1 (415) 527-5035

**Access Code (Meeting Password):** 78666746

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7:00 p.m. to 7:05 p.m.	<b>Introduction and Overview</b> <ul style="list-style-type: none"><li>• Introductions and Housekeeping</li></ul>	William Deseron
7:05 p.m. to 7:20 p.m.	<b>Presentation</b> <ul style="list-style-type: none"><li>• Overview of 1115 Demonstration Waiver</li><li>• Overview of Operational Process</li></ul>	William Deseron
7:20 p.m. to 8:45 p.m.	<b>Public Testimony for 1115 Demonstration Waiver</b>	Stakeholders
8:45 p.m. to 9:00 p.m.	<b>Written Public Comments</b> <p>Review of additional opportunities for stakeholder comments.</p>	William Deseron

---

#### Key Points:

- The Idaho State Medicaid Agency is requesting from the Centers of Medicare and Medicaid Services (CMS) an amendment to the 1115 Research & Demonstration Waiver, Project Number 11-W-00339/10 to allow reimbursements to spouses and parents for personal care services.
- This meeting is a public hearing for receiving comments on an amendment to the 1115 Demonstration Waiver to allow for Family Personal Care Services.
- Family Personal Care Services is defined as personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or activities of daily living (ADL) provided by a spouse or a parent of a minor child.
- Please submit additional feedback by close of business on **Thursday, November 2**. Please, submit your written comments by E-mail: [MCPT@dhw.idaho.gov](mailto:MCPT@dhw.idaho.gov). Please, include **1115 Demonstration Waiver** in the **Subject Line**.



# Spouses and Parents as Paid Family Caregivers

**October 10, 2023**

**William Deseron**



IDAHO DEPARTMENT OF  
HEALTH & WELFARE





## Introduction and Welcoming Remarks





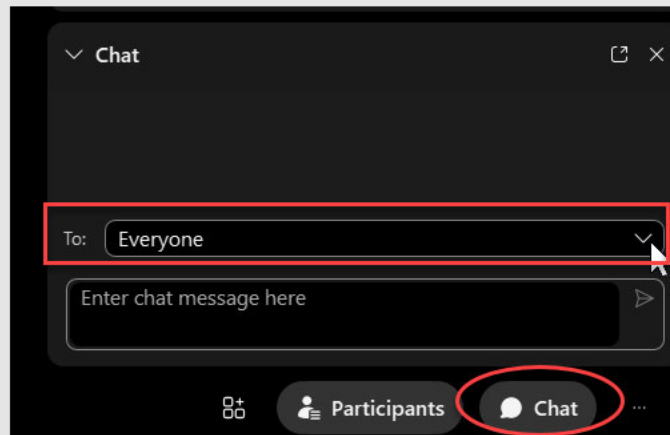
The presentation is being recorded.

WebEx attendees will be muted. After the presentation, we will provide an opportunity to provide verbal public comment. If you intend to provide verbal comment, you may indicate by:

- Using the “raise hand” option located at the center/bottom of your screen; or



- Indicate in the chat window at the bottom right of your screen that you intend to comment.



A co-host will unmute you when it is your turn.

For those joining the presentation via phone only, we will provide an opportunity to provide comment after the WebEx comments.



The Idaho State Medicaid Agency is requesting from the Centers of Medicare and Medicaid Services (CMS) an amendment to the 1115 Research & Demonstration Waiver, Project Number 11-W-00339/10 to allow reimbursements to spouses and parents for personal care services. This meeting is for public comment regarding this amendment.



<b>Pre-PHE</b> (prior to March 2020)	<b>PHE</b> (March 2020-Nov 11, 2023)	<b>Post-PHE</b> (Nov 12, 2023 – TBD)
<p>Spouses and parents of minor children were specifically prohibited from providing PCS and Attendant Care services.</p>	<p>Parents of minor children &amp; spouses were offered temporary flexibility of federal regulation <a href="#"><u>42 C.F.R. § 440.167 Personal Care Services</u></a> to be paid direct care workers by Idaho Medicaid to address challenges presented by PHE.</p>	<p>The Idaho State Medicaid Agency intends on requesting an 1115 Demonstration Waiver amendment to allow reimbursement to spouses or parents.</p> <p>NOTE: This is amendment is not yet approved by CMS</p>



- Section 1115 of the Social Security Act gives the Secretary of Health and Human Services (HHS) authority to approve experimental, pilot or demonstration projects that are found by the Secretary to be likely to assist in promoting the objectives of the Medicaid program.
- Section 1115 waivers are granted to states by the Secretary of HHS for the sole purpose of testing policy innovations that show some promise of providing empirical evidence supporting new reimbursement schemes and methods of service delivery.
- As a special condition of being granted a 1115 waiver, a state must show that over the duration of the entire waiver, the financial results will be entirely budget neutral.



Family Personal Care Services (FPCS) is defined as personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or activities of daily living (ADL). This benefit is provided by a spouse or a parent of a minor child, referred to as legally responsible individual (LRI) in the 1115 amendment. These services may include personal assistance and medical tasks. Services are based on the person's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. This assistance may take the form of hands-on assistance (performing a task for the person) or cueing to prompt the participant to perform a task.

Note: This benefit is the same as Idaho's current state plan Personal Care Service (PCS) and 1915c HCBS A&D Waiver Attendant Care benefit except for being provided a spouse or parent of a minor child.



Must meet Idaho's definition of "Extraordinary Circumstances" as follows:

- The medically necessary care activities exceed the range of activities that an LRI would ordinarily perform, if the participant did not have a disability or chronic illness (as determined by Bureau of Long-Term Care's functional assessment).
- The participant has attempted to arrange for a non-LRI PCS or Attendant Care direct care worker to provide the needed services and the PAAs contacted do not have direct care workers to fulfill the participant's authorized hours and services.
- The requested LRI direct care worker is capable of providing services in alignment with existing standards for state plan PCS and Attendant Care Services.
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1. Participant must complete a functional assessment with Nurse Reviewer and qualify for PCS or Attendant Care services.
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3. If non-LRI direct care worker is not available and a qualifying LRI direct care worker is available, the participant may request an application for FPCS through the Bureau of Long-Term Care. Applications must include;
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  - Parent of minor child or spouse must complete and sign an attestation that service delivery quality and documentation standards must be met, the arrangement may be revoked if there is a health or safety issue, they have reviewed The False Claims Act (31 U.S.C. §§ 3729 – 3733) and acknowledge that they are responsible for accurate service delivery and documentation.
4. Submit the completed application to Bureau of Long-Term Care .





LRI Direct Care Workers must meet all existing PCS or Attendant Care Direct Care Worker requirements including:

- At least 18 years of age.
- Complete and pass an Idaho Department of Health and Welfare background check.
- Be employed by a Personal Assistance Agency.
- Complete direct care worker training in essential caregiving activities provided by the PAA.
- Must be compliant with Personal Assistance Agency's required supervisory visits and oversight.



The FPCS benefit will be carved out of the duals' program. All authorizations and billing will go through Gainwell Technologies.

Personal Assistance Agencies will need to meet all the regular requirements for providing PCS and Attendant Care services, including compliance with all EVV requirements. In addition, Personal Assistance Agencies providing FPCS will have the following requirements:

- Provide email confirmation or signatures when the agency does not have direct care staff available to provide PCS or Attendant Care when requested by a participant.
- Keep the FPCS approval notice with the service plan.
- Update their Quality Assurance (QA) Plans to describe how they ensure adequate oversight of participants using an FPCS provider.
- Bill T1019 with modifier V1 for FPCS.



Idaho is also considering additional requirements for Personal Assistance Agencies to provide oversight and screening for FPCS providers. This is intended to protect the health and safety of vulnerable participants and ensure services are being provided effectively and are in their best interest.

The options being considered by Idaho at this time include the following additional responsibilities for Personal Assistance Agencies:

Option 1

- Include FPCS participants in QA sampling
- Include a description of how adequate RN oversight is conducted for participants using FPCS in their QA plans.

Option 2

- Conduct onsite supervisory visit for 100% of FPCS roster
- Submit quarterly update forms to the Bureau of Long-Term Care that validate compliance



Eligibility for FPCS will be redetermined on an annual basis. Redetermination will include the following documentation to be submitted to the Bureau Of Long-Term Care:

- Signature or email from 2 Personal Assistance Agencies indicating there are no available direct care workers.
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If a Personal Assistance Agency identifies that a non-LRI direct care worker is available, participants will need to transition to PCS and/or Attendant care services.



Participants currently using the PHE flexibilities will need to transition to the new FPCS benefit. Idaho intends to implement a transition period as follows:

- After November 11, 2023, participants requesting to have a parent/spouse as a provider must apply for FPCS to prevent a lapse in service.
- Participants currently using this flexibility will have until January 31, 2024 to apply for FPCS.
- Participants must meet the FPCS eligibility requirements to continue using a parent/spouse to provide these services.
- BLTC will survey agencies for rosters of current parents/spouses employed and providing PCS or Attendant Care services in mid-November and again mid-January.



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Accepting written comments post marked by  
**October 19, 2023**

**Email:**

[MCPT@dhw.Idaho.gov](mailto:MCPT@dhw.Idaho.gov)

**Mail:**

Department of Health and Welfare  
ATTN: Medicaid Policy  
PO Box 83720  
Boise, ID 83720



# Spouses and Parents as Paid Family Caregivers

**October 27, 2023**

**William Deseron**



IDAHO DEPARTMENT OF  
HEALTH & WELFARE





## Introduction and Welcoming Remarks





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WebEx attendees will be muted. After the presentation, we will provide an opportunity to provide verbal public comment. If you intend to provide verbal comment, you may indicate by:

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  - A co-host will unmute you when it is your turn.
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The Division of Medicaid for the state of Idaho is requesting from the Centers of Medicare and Medicaid Services (CMS) an amendment to the 1115 Research & Demonstration Waiver, Project Number 11-W-00339/10 to allow reimbursements to spouses and parents for personal care services. This meeting is for public comment regarding this amendment.



<b>Pre-PHE</b> (prior to March 2020)	<b>PHE</b> (March 2020-Nov 11, 2023)	<b>Post-PHE</b> (Nov 12, 2023 – TBD)
<p>Spouses and parents of minor children were specifically prohibited by federal regulations from providing Personal Care and Attendant Care services.</p>	<p>Parents of minor children and spouses were offered temporary flexibility of federal regulation <a href="#"><u>42 C.F.R. § 440.167 Personal Care Services</u></a> to be paid as direct care workers by Idaho Medicaid to address challenges presented by the PHE.</p>	<p>The Division of Medicaid for the state of Idaho is requesting an 1115 Demonstration Waiver amendment to allow reimbursement to spouses and parents for Personal Care and Attendant Care services.</p> <p>NOTE: This amendment is not yet approved by CMS.</p>



- Section 1115 of the Social Security Act gives the Secretary of Health and Human Services (HHS) authority to approve experimental, pilot or demonstration projects that are found by the Secretary to be likely to assist in promoting the objectives of the Medicaid program.
- Section 1115 waivers are granted to states for the sole purpose of testing policy innovations that show some promise of providing empirical evidence supporting new reimbursement schemes and methods of service delivery.
- As a special condition of being granted a 1115 waiver, a state must show that over the duration of the entire waiver, the financial results will be entirely budget neutral.



Family Personal Care Services (FPCS) is defined as personal and medically oriented tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care, or activities of daily living (ADL). This benefit is provided by a spouse or a parent of a minor child, referred to as legally responsible individual (LRI) in the 1115 amendment. These services may include personal assistance and medical tasks. Services are based on the person's abilities and limitations, regardless of age, medical diagnosis, or other category of disability. This assistance may take the form of hands-on assistance (performing a task for the person) or cuing to prompt the participant to perform a task.

Note: This benefit is the same as Idaho's current state plan Personal Care Service (PCS) and 1915c HCBS A&D Waiver Attendant Care benefit except for being provided a spouse or parent of a minor child.



Must meet Idaho's definition of "Extraordinary Circumstances" as follows:

- The medically necessary care activities exceed the range of activities that an LRI would ordinarily perform, if the participant did not have a disability or chronic illness (as determined by Bureau of Long-Term Care's functional assessment).
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**November 3, 2023**

**Email:**

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**Mail:**

Department of Health and Welfare  
ATTN: Medicaid Policy  
PO Box 83720  
Boise, ID 83720



# Spouses and Parents as Paid Family Caregivers

**November 1, 2023**

**William Deseron**



IDAHO DEPARTMENT OF  
HEALTH & WELFARE





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**November 3, 2023**

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**Mail:**

Department of Health and Welfare  
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PO Box 83720  
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