

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



State Demonstrations Group

September 3, 2020

Ben Shaffer
Assistant Secretary of Health and State Medicaid Director
Rhode Island Executive Office of Health and Human Services
Virks Building
3 West Road
Cranston, RI 02920

Dear Mr. Shaffer:

We are writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is approving Rhode Island's request to update the Rhode Island Comprehensive Demonstration (Project Number 11-W-00242/1) by adding an Emergency Preparedness and Response Attachment K in order to respond to the COVID-19 pandemic. This update has been incorporated into the demonstration's Special Terms and Conditions as Attachment K. The enclosed Attachment K provides authority for retainer payments for multiple (up to three) episodes of up to 30 consecutive billing days per beneficiary for Home and Community Based Services (HCBS) that have a personal care component subject to the specified limits. The previously approved Attachment K authorities from May 7, May 1, and March 24, 2020, are also included.

The authorities that the state has requested in Attachment K are effective from February 27, 2020 through February 26, 2021, 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 K pages with this correspondence.

If you need assistance, feel free to contact Kathleen O'Malley of my staff at (410) 786-8987 or by e-mail at Kathleen.OMalley@cms.hhs.gov.

Sincerely,



Angela D. Garner
Director
Division of System Reform Demonstrations

Enclosure

cc: Joyce Butterworth, 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: Rhode Island

B. Waiver Title(s): Rhode Island Comprehensive Demonstration

C. Control Number(s): 11-W-00242/1 (RI's previous 1915(c) Waivers were subsumed under this waiver)

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. The State of Rhode Island is experiencing a state of emergency due to the novel coronavirus disease. In order to slow the spread of the virus, federal and state public health officials are encouraging “social distancing,” which means the entire State population has been affected by the need to reduce contact with others to the extent possible.

The State of Rhode Island is requesting to use retainer payments for multiple (up to three) episodes of up to 30 days per beneficiary. This amendment request is additive to the previously approved Attachment K. A description of request and statement of understanding of the guardrails can be found in section K-2-j.

F. Proposed Effective Date: Start Date: February 27, 2020 **Anticipated End Date:** February 26, 2021

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:

Statewide

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. ___ 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. ___ 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]:

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

c. ___ Temporarily permit payment for services rendered by family caregivers or legally responsible individuals if not already permitted under the waiver. Indicate the services to which this will apply and the safeguards to ensure that individuals receive necessary services as

authorized in the plan of care, and the procedures that are used to ensure that payments are made for services rendered.

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

i. ___ Temporarily modify provider qualifications.

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

ii. ___ Temporarily modify provider types.

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

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

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

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

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. ___ 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.]

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

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

[Specify the services.]

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

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

Rhode Island is requesting to utilize retainer payments for multiple (up to three) episodes of up to 30 days per beneficiary for HCBS services that have a personal care component. The State assures that it will comply with the following:

- Limit retainer payments to a reasonable amount and ensure recoupment if other resources, once available, are used for the same purpose;
- The retainer payment shall not exceed the payment for the relevant service;
- Collect an attestation from the provider acknowledging that retainer payments will be subject to recoupment if inappropriate billing or duplicate payments for services occurred (or in periods of disaster, duplicate uses of available funding streams which means using more than one funding stream for the same purpose.), as identified in a state or federal audit or any other authorized third party review;
- Require an attestation from the provider that it will not lay off staff, and will maintain wages at existing levels;
- Require an attestation from the provider that they had not received funding from any other sources, including but not limited to unemployment benefits and Small Business Administration loans, that would exceed their revenue for the last full quarter prior to the PHE, or that the retainer payments at the level provided by the state would not result in their revenue exceeding that of the quarter prior to the PHE;
- If a provider had not already received revenues in excess of the pre-PHE level but receipt of the retainer payment in addition to those prior sources of funding results in the provider exceeding the pre-PHE level, any retainer payment amounts in excess would be recouped; and
- If a provider had already received revenues in excess of the pre-PHE level, retainer payments are not available.

Retainer payments are calculated by taking the difference between the base period utilization and the projected utilization during the COVID period (with assumptions), on a per provider basis. The base period (pre-COVID) is October-December 2019. Assumptions regarding how the utilization of specific services would change due to COVID-19 were used to reduce each service category by certain percentages, see chart below, to get the projected utilization. Additional assumptions were also used in the model, such as a discount for authorizations that were transferred between programs, to better support individuals. The project utilization was calculated individually by provider, at the specific service level and aggregated by provider. The difference between the base period utilization and the projected utilization is the amount that each provider would receive via a monthly retainer payment.

Assumptions:

Service Description	<i>Reduced by this %</i>
Respite	0%
Comm Based Supports	75%
Job Coaching	75%
Day Program	77.0%
Job Retention	75%
Self-directed Goods and Services	75%
Prevocational Training	75%

Self-Direct	0%
Natural Supports	0%
Residential - Group Home	15.5%
Residential - Shared Living	30%
Home Health	0%
PERS	0%

Retainer payments are calculated in a month cycle. It will be paid for as a lump sum, but that lump sum is calculated based on a unit per unit basis based on prior paid claims, and individual utilization experience. EOHHS will not require that there be a service provided to the individual in between the episodes of retainer payments.

The HCBS that include a component of personal care for which retainer payments will be made include the following:

- Respite
- Comm Based Supports
- Job Coaching
- Day Program
- Job Retention
- Self-directed Goods and Services
- Prevocational Training
- Self-Direct
- Natural Supports
- Residential - Group Home
- Residential - Shared Living
- Home Health
- PERS

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

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

l. ___ Increase Factor C.

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

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

Appendix K Addendum: COVID-19 Pandemic Response

1. HCBS Regulations

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

2. Services

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

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

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

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

4. Provider Qualifications

- a. Allow spouses and parents of minor children to provide personal care services

- b. Allow a family member to be paid to render services to an individual.
- c. Allow other practitioners in lieu of approved providers within the waiver. *[Indicate the providers and their qualifications]*

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

5. Processes

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

Contact Person(s)

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

First Name: Melody
Last Name: Lawrence
Title: Director of Policy and Delivery System Reform
Agency: RI Executive Office of Health and Human Services
Address 1: 3 West Rd
Address 2: Click or tap here to enter text.
City: Cranston
State: RI
Zip Code: 02920
Telephone: 401-462-6348
E-mail: Melody.lawrence@ohhs.ri.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: Click or tap here to enter text.
Last Name Click or tap here to enter text.
Title: Click or tap here to enter text.
Agency: Click or tap here to enter text.
Address 1: Click or tap here to enter text.
Address 2: Click or tap here to enter text.
City Click or tap here to enter text.
State Click or tap here to enter text.
Zip Code Click or tap here to enter text.
Telephone: Click or tap here to enter text.
E-mail Click or tap here to enter text.
Fax Number Click or tap here to enter text.

8. Authorizing Signature

Signature:

Date:


State Medicaid Director or Designee

First Name: *Womazetta*
Last Name *Jones*
Title: Secretary
Agency: RI Executive Office of Health and Human Services
Address 1: 3 West Rd
Address 2: Click or tap here to enter text.
City Cranston
State RI
Zip Code 02920
Telephone: 401-462-2060
E-mail *Womazetta.Jones@ohhs.ri.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.