

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

June 19, 2020

Stephen Smith
Director
Bureau of TennCare
Tennessee Department of Finance and Administration
310 Great Circle Road
Nashville, TN 37243

Dear Mr. Smith:

We are writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is approving Tennessee's request to update its demonstration, TennCare II (Project Number 11-W-00151/4) with the Emergency Preparedness and Response Attachment K in order to respond to the COVID-19 pandemic. This has been incorporated into the demonstration's special terms and conditions as Attachment K.

The authorities that the state has requested in the Attachment K are effective from March 13, 2020, through March 12, 2021, and apply in all locations served by the demonstration for anyone impacted by COVID-19 who receives home and community-based services through the demonstration. We have included the approved Attachment K pages with this correspondence.

Your project officer, Lorraine Nawara is available to answer any questions. Ms. Nawara can be reached at Lorraine.nawara1@cms.hhs.gov or (410) 786-4252.

Sincerely,

6/19/2020

X Andrea J. Casart

Signed by: Andrea J. Casart -A

Andrea J. Casart
Director
Division of Eligibility and Coverage
Demonstrations

Enclosure

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cc: Tandra Hodges, State Monitoring Lead, Medicaid and CHIP Operations Group

ATTACHMENT K: Emergency Preparedness and Response

Background:

This standalone appendix may be utilized by the state during emergency situations to request amendments to its approved waiver. It includes actions that states can take under the existing Section 1915(c) home and community-based waiver authority in order to respond to an emergency. Other activities may require the use of various other authorities such as the Section 1115 demonstrations or the Section 1135 authorities.¹ This attachment may be applied retroactively as needed by the state.

Appendix K-1: General Information

General Information:

A. State: Tennessee

B. Waiver Title(s):

C. Control Number(s):

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.

This Attachment K submission pertains to the COVID-19 pandemic. Tennessee Governor Bill Lee TN Governor issued Executive Order 14 declaring a State of Emergency to facilitate COVID-19 response on March 12, 2020, one day after the World Health Organization officially characterized COVID-19 as a “pandemic” and one day before the declaration of a national emergency by President Trump.

Effective retroactively to March 13, 2020, through March 12, 2021, the State of Tennessee seeks section 1115(a) demonstration authority to operate its Medicaid program without regard to the specific statutory or regulatory provisions (or related policy guidance) described below, in order to furnish medical assistance in a manner intended to protect, to the greatest extent possible, the health, safety, and welfare of individuals and providers who may be affected by COVID-19. These temporary flexibilities will be implemented as determined by TennCare to be needed during the COVID-19 emergency and discontinued as the risk of exposure and spread of COVID-19 are reduced, and as providers are able to safely resume provision of services as described in the currently approved demonstration.

F. Proposed Effective Date: Start Date: March 13, 2020 Anticipated End Date: March 12, 2021

G. Description of Transition Plan.

These temporary flexibilities will be implemented as determined by TennCare to be needed during the COVID-19 emergency and discontinued as the risk of exposure and spread of COVID-19 are reduced, and as providers are able to safely resume provision of services as described in the currently approved waiver applications.

H. Geographic Areas Affected:

Each of these waivers and the populations they serve are statewide, as is the impact of the COVID-19 emergency.

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

The Tennessee Department of Health (TDH) activated its State Health Operations Center (SHOC) on January 16, 2020 to maximize capacity and available resources in preparation to respond to identified COVID-19 cases throughout the State. COVID-19 was designated as a “reportable disease” by TDH later that month, and a Task Force was formed under direction of Governor Bill Lee on March 4, 2020 to enhance Tennessee’s coordinated efforts to prevent, identify, and treat potential cases. A small contingent of the State Emergency Operations Center was activated on March 6, 2020 to respond to COVID-19 operations in the State, and to support TDH. Governor Bill Lee issued Executive Order 14 declaring a State of Emergency to facilitate COVID-19 response on March 12, 2020. The State of Tennessee Emergency Management Plan (TEMP) was activated and the State Emergency Operations Center (SEOC) is at a Level 3– State of Emergency. The Tennessee Emergency Management Agency (TEMA) supports local government needs; anticipates, responds to and remediates life threatening situations; supports the TDH; protects critical infrastructure; and ensures shared situational awareness and unified operations across Tennessee Government. On March 23, Governor Lee established the COVID-19 Unified Command, a joint effort to be led by Finance and Administration Commissioner Stuart McWhorter, to streamline coordination across the TEMA, TDH and Tennessee Department of Military during the COVID-19 emergency.

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. X Access and Eligibility:

i. X Temporarily increase the cost limits for entry into the waiver.

[Provide explanation of changes and specify the temporary cost limit.]

COVID-related payment flexibilities described in this Appendix K to the TennCare II 1115 demonstration waiver, including temporary rate increases, retainer payments, and the COVID+ Residential Special Needs Adjustment (RSNA) and Personal Care Rate Differential (PCRD) shall not be counted against a CHOICES or ECF CHOICES member’s expenditure cap for purposes of determining continued eligibility for the program. A person enrolled in CHOICES or ECF CHOICES shall not be dis-enrolled if the sole reason the person’s expenditure cap would be exceeded is the payment flexibilities as described in this appendix. Except as provided in this section, all other policies applying to expenditure caps in CHOICES and ECF CHOICES continue to apply.

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. X Temporarily expand setting(s) where services may be provided (e.g. hotels, shelters, schools, churches). Note for respite services only, the state should indicate any facility-based settings and indicate whether room and board is included:

[Explanation of modification, and advisement if room and board is included in the respite rate]:

Residential habilitation services (i.e., Assisted Care Living Facility, Adult Care Home, Community Living Supports, Community Living Supports-Family Model, Intensive Behavioral Community Transition and Stabilization Services), Companion Care, Personal Assistance, Personal Care Visits, Attendant Care, and any other supportive services a person might otherwise receive in the setting where they live may be temporarily provided in alternative community-based settings or locations when necessary to minimize risk of COVID-19 exposure or spread.

Alternative settings may include previously utilized, larger Residential Habilitation dwellings (group homes). There are several of these homes available across the state that we have tentatively planned for use during cases of potential cluster infection or for isolation as needed. This will allow us to continue supports in community settings and avoid institutional placement, while also minimizing the risk of further spread. Additionally, we have contemplated isolation supports in the homes of asymptomatic COVID positive staff who are also supporting persons with a positive diagnosis, and have received offers of availability of space in local churches and community centers as needed.

Utilization of any alternative support location would be under emergency pretense, only because the individual has been displaced due to the COVID-19 emergency. This could include the need for isolation supports due to COVID-19 diagnosis or, potentially, agency or network viability concerns.

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. X 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.]

For licenses which have not received a licensure survey, the current license will be placed in “Extended Status” until such time as surveys can be completed. An extension letter will be emailed to each licensee when a license is placed in “Extended Status”.

Flexibility may also be provided with respect to allowing a licensed provider to deliver services in a different setting—for example, allowing an Adult Day Care provider to deliver services in the home.

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

During the period of the COVID-19 emergency, annual level of care evaluations may be temporarily extended, and level of care evaluations or re-evaluations may be conducted remotely.

f. X 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.]

HCBS providers are facing severe hardships and without quick financial assistance, some are at risk of closure placing the adequacy of the provider networks in jeopardy. HCBS providers support some of the state's most vulnerable populations. Medicaid is the most significant revenue source for HCBS providers. Most HCBS providers are not well-capitalized and depend on regular cash flow to meet payroll and day-to-day operating expenses. Certain HCBS providers have been most significantly impacted by the COVID-19 emergency—both in terms of reduced revenues and increased costs of service delivery, including staffing and PPE. Providers serving individuals confirmed COVID-19 positive are experiencing severe staff shortages and additional costs to ensure continuity of services in the home and avoid hospitalization, except when medically appropriate.

The intent of these rate increases is to help offset increased staffing, PPE, and other costs related to the COVID-19 pandemic, and to help ensure the sustainability of the HCBS workforce and provider network.

As a condition of eligibility for the enhanced rates, the provider must agree to continue to pay staff at current wage/salary levels (but can use the increase to pay staff more) and commit to continuing service delivery both during and beyond the public health emergency. All COVID-19 related rate increases are subject to audit and recoupment if these conditions are not met.

The Residential Special Needs Adjustment (RSNA) and COVID+ Personal Care Rate Differential (PCRD) are specifically intended to reimburse hazard pay to direct support staff, as well as overtime and PPE costs for services provided to a person confirmed COVID-19+.

As a condition of eligibility for these payments, the \$5/hour hazard pay must have been made to direct support staff, as supported by payroll records. Payments are subject to audit and adjustment or recoupment if it is determined that the \$5/hour hazard pay was not paid to direct support staff, or the person for which such RSNA or PCRD, as applicable, was billed was not confirmed COVID-19+.

10% and 30% rate increases (described below) are effective beginning dates of service March 13, 2020 for a two-month period (3/13/20 – 5/12/20).

A 10% temporary rate increase for residential services

CHOICES:

- Assisted Care Living Facility
- Adult Care Home
- Community Living Supports
- Community Living Supports – Family Model

ECF CHOICES:

- Community Living Supports
- Community Living Supports – Family Model
- Intensive Behavioral Community Transition and Stabilization Services

A 30% temporary rate increase for CHOICES Attendant Care

- 30% rate increase for Attendant Care aligns with CHOICES Personal Care Visits and ECF CHOICES Personal Assistance

A 10% temporary rate increase for CHOICES Personal Care Visits and ECF CHOICES Personal Assistance, Supportive Home Care, and Intensive Behavioral Family-Centered Treatment, Stabilization Services.

COVID+ Residential Special Needs Adjustment (RSNA)

- A per diem add-on payment to the existing residential rate to reimburse hazard pay to direct support staff, as well as overtime and PPE costs for services provided to a person confirmed COVID-19+, including:

CHOICES:

- Assisted Care Living Facility
- Adult Care Home
- Community Living Supports
- Community Living Supports – Family Model

ECF CHOICES:

- Community Living Supports
- Community Living Supports – Family Model
- Intensive Behavioral Community Transition and Stabilization Services

COVID+ Personal Care Rate Differential (PCRD)

- A per unit add-on to the existing unit rate to reimburse hazard pay to direct support staff, as well as overtime and PPE costs for services provided to a person confirmed COVID-19+

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

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

Effective March 13, 2020, during the period of the COVID-19 emergency, Care Coordination (in CHOICES) and Support Coordination (in ECF CHOICES) visits may be conducted remotely, using phone or video conferencing solutions. When either of these responsibilities are completed in place of a required face-to-face meeting, the CC or SC should document the occurrence in a corresponding service note. For CC and SC meetings that require signature sheets, CCs and SCs should write down people's names (the name of everyone who participates in the meeting) on the signature sheet. The CC/SC should sign and date the form and identify somewhere on the signature sheet the phone call was held in lieu of a face-to-face meeting due to the COVID 19 emergency. Electronic signature and/or verbal authorizations may be permitted during this period. The State will ensure that the service plan is implemented and that individuals receive services as authorized during the period of the emergency, with the exception of services significantly impacted by state and federal orders and recommendations to practice social distancing (i.e., Community Integration Support Services, Employment Services, etc.), which will resume as the risk of exposure and spread of COVID-19 are reduced, and as providers are able to safely resume provision of services as described in the currently approved waiver applications.

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. X 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.]

Personal Care Services, including Personal Care Visits and Attendant Care in CHOICES and Personal Assistance in ECF CHOICES providers in an acute-care hospital or short-term institutional stay when the waiver participant is displaced from home because of COVID-19 and such supports are not otherwise available in these settings.

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.]

Expenditure authority is requested to offer retainer payments for Adult Day Care (ADC) services in CHOICES and Job Coaching, Supported Employment - Small Group (SE-SG), Integrated Employment Path (IEP), and Community Integration Support Services (CISS) in Employment and Community First CHOICES authorized to be provided between March 13, 2020 through May 12, 2020. Retainer payments will provide partial payment (75% of the expected Medicaid payment rate) to help offset the financial impact of significant reductions in Medicaid revenue when a service is not currently being delivered or has been substantially reduced—in this case, because of social distancing and stay-at-home orders related to the pandemic.

As a condition of payment, the provider must agree to continue to pay all ADC, Job Coaching, SE-SG, IEP, and CISS staff at current wage/salary levels and commit to resuming service delivery once the quarantine period has concluded. For ECF CHOICES providers, this includes a commitment to expanding capacity to serve additional members as such services are needed by ECF CHOICES members and as funds are available to serve additional members beginning July 1, 2020. Retainer payments are subject to audit and recoupment if it is determined that the authorized ADC, Job Coaching, SE-SG, IEP, or CISS (or alternative services) were in fact provided and billed, resulting in duplicate payment.

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 – limited to flexibility regarding staffing standards in residential services during the COVID-19 emergency, in order to allow essential services delivery to continue in circumstances where staffing resources are limited due to the pandemic, and in accordance with written guidance approved by TennCare and issued by DIDD; day services are not included
 - 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: Aaron
Last Name: Butler
Title: Director of Policy
Agency: Division of TennCare
Address 1: 310 Great Circle Road
Address 2: Click or tap here to enter text.
City: Nashville
State: Tennessee
Zip Code: 37243
Telephone: 615-507-6448
E-mail: Aaron.c.Butler@tn.gov
Fax Number: 615-741-1092

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

First Name: Patti
Last Name: Killingsworth
Title: Assistant Commissioner,
Chief of LTSS
Agency: Division of TennCare
Address 1: 310 Great Circle Road
Address 2: Click or tap here to enter
text.
City: Nashville
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