



3 West Rd | Cranston, RI 02920 | Ph: 401.462.5274 | Fax: 401.462.3677

March 16, 2020

Judith Cash, Director  
State Demonstrations Group  
Center for Medicaid and CHIP Services (CMCS)  
Centers for Medicare and Medicaid Services (CMS)  
7500 Security Blvd., Mail Stop S2-25-26  
Baltimore, MD 21244

Dear Ms. Cash,

The Rhode Island Executive Office of Health and Human Services (EOHHS) hereby submits a request for approval for an 1115 Waiver Demonstration, pursuant to Section 1115 of the Social Security Act, from the Centers for Medicare and Medicaid Services (CMS), to prevent the transmission of the Coronavirus Disease (COVID-19) to the extent possible.

Ensuring access to care for our population is critical as we respond to COVID-19. The goal of the waiver request is to ensure that Medicaid members continue to receive medically necessary Medicaid-covered services while minimizing exposure to the virus. Further, due to the need for social distancing, EOHHS anticipates operating its Medicaid program with reduced staffing levels. Additionally, visitors to nursing homes are no longer being allowed in Rhode Island, meaning that elderly individuals do not have family assistance.

We appreciate your assistance and look forward to working together to achieve our mutual goal of protecting the health and well-being of Rhode Islanders.

Sincerely,

Womazetta Jones  
Secretary, Rhode Island Executive Office of Health and Human Services

**Medicaid Waiver Request to Assist in Addressing Issues  
Related to the Spread of COVID-19, Pursuant to Section  
1115 of the Social Security Act**

March 16, 2020

State of Rhode Island

Rhode Island Executive Office of Health and Human Services  
3 West Road  
Cranston, RI 02920

## I. Overview

The Rhode Island Executive Office of Health and Human Services (EOHHS), the single state Medicaid agency for the state of Rhode Island, hereby submits the following request for a waiver pursuant to Section 1115 of the Social Security Act.

The purpose of this waiver is to enable EOHHS to make temporary changes to the administration of its Medicaid program, in order to prevent the transmission of the Coronavirus Disease (COVID-19) to the extent possible.

## II. Section 1115 Waiver Request

### A. Modify person-centered service plan requirements

EOHHS proposes to modify all person-centered service plan procedures, including but not limited to those required under 42 CFR 441.301(c) and 42 CFR 441.725, to ensure that Medicaid members receive authorization for appropriate services, while preventing worker exposure to the novel coronavirus.

EOHHS proposes to conduct the planning process through written, telephonic, and/or video conference, as appropriate to the needs of the individual Medicaid member. EOHHS requests a waiver of the requirement that the person-centered planning process occur at times and locations of convenience to the individual, insofar as in-person meetings are the most convenient to the individual. To prevent exposure of workers and others who participate in the planning process, EOHHS proposes to suspend in-person planning meetings for the duration of the novel coronavirus emergency. This change will be implemented for all programs that would otherwise usually involve in-person service plan meetings, including, but not limited to, home- and community-based services/programs, Early Intervention services, home-based therapeutic services, and the Katie Beckett program.

In addition, due to the potential for reductions in staff capacity, EOHHS requests of waiver of the requirement to conduct reviews of person-centered plans at least every twelve (12) months. EOHHS proposes to postpone for six (6) months any service plan reviews for which the twelve (12) month review period occurs during the novel coronavirus emergency. EOHHS proposes to continue conducting reviews that are necessary due to a significant change in the individual's circumstances or needs, or at the request of the individual. For waiver requests specific to previous 1915(c) waivers, see *Appendix K: Emergency Preparedness and Response*.

### B. Extend level of care authorizations

For recipients of home- and community-based services/programs, Early Intervention services, home-based therapeutic services, the Katie Beckett program, and other long-term services and supports, the level of care for enrolled participants is reevaluated at least annually. EOHHS proposes to postpone for six (6) months any level of care reevaluations for which the twelve (12) month review period falls during the novel

coronavirus emergency. For waiver requests specific to previous 1915(c) waivers, see *Appendix K: Emergency Preparedness and Response*.

C. Modify requirements for institutional level of care determinations

Before receiving eligibility for long-term services and supports (LTSS), including institutional care, home- and community-based services, and Katie Beckett, an in-person assessment must be conducted to determine if the individual has an institutional level of care. EOHHS proposes to conduct the level of care determinations via telephonic and/or video conference, as appropriate to the needs of the individual Medicaid member. EOHHS will utilize information received through records submitted by the applicant's physician, telephonic conversations with the Medicaid member, and telephonic conversations with the individual's caregiver/power of attorney, as applicable. The current level of care assessments will still be completed, to the furthest extent possible.

EOHHS proposes to implement these alternative assessment procedures temporarily during the novel coronavirus State of Emergency, for new applicants and for existing Medicaid members whose level of care changes during the State of Emergency. Following the termination of the State of Emergency, EOHHS will conduct in-person assessments to confirm the level of care determination.

D. Permit reimbursement for telephonic-only telehealth and non-HIPAA compliant telehealth

Rhode Island currently reimburses providers for telehealth services provided pursuant to 42 CFR 410.78. However, EOHHS understands that many Medicaid providers do not have technological capacity at this time to conduct HIPAA-compliant video conferencing. In order to allow patients access to medical care from the many providers who lack HIPAA-compliant video capacity and to reduce the need for travel to medical providers in anticipation of increasing COVID-19 cases, EOHHS proposes to reimburse primary care and behavioral health providers for services provided by telephone only telehealth and non-HIPAA compliant telehealth, for the duration of the novel coronavirus State of Emergency. These services would include, but may not be limited to, behavioral health counseling and therapy, mental health assessment, case management, and crisis services.

For consistency across private and public payers and to maximize the public health benefit of this policy, EOHHS requests permission to reimburse providers for telephonic provision of these services, at the same rates as for in-person visits. This policy would only be in effect during the State of Emergency.

Although EOHHS is fully supportive of protecting each Medicaid member's privacy and protected health information to the furthest extent possible, during this State of Emergency, it is important that providers be able to utilize the tools available to them to reach their patients. EOHHS proposes to temporarily allow those providers that do not have the technological capacity to conduct HIPAA-compliant video conferencing, to utilize non-HIPAA-compliant video conferencing technologies. These providers will be

encouraged to utilize telephone-only conversations to the furthest extent possible, and rely on these non-HIPAA compliant video conferencing technologies only when absolutely necessary to include a visual component to the interaction.

E. Provide federal matching funds for telephone triage for COVID-19 treatment

Testing for COVID-19 can only be done on individuals who have symptoms that are consistent with COVID-19 and who have had contact with a confirmed case of COVID-19 or travel history to a country with ongoing community spread of COVID-19. An individual is considered a contact if they have had direct, face-to-face contact with a person with COVID-19. Testing individuals with no symptoms or history of travel is not recommended by the Centers for Disease Control and Prevention (CDC). CDC is recommending that if an individual suspects that they may have COVID-19, that they should first call their healthcare provider to determine whether they should be referred to the Department of Health for testing for COVID-19, if they need to seek care in-person, or if they should remain home and self-quarantine.

Providers' call volumes have been increasing due to the public's increased concern and awareness of COVID-19. To support providers in this important work, EOHHS proposes to establish a new covered benefit, telephonic triage for COVID-19. For the duration of the novel coronavirus State of Emergency, primary care providers (including those employed by FQHCs) and Community Mental Health Organizations licensed by the Rhode Island Behavioral Health, Developmental Disabilities and Hospitals (BHDDH) will be allowed to be reimbursed \$5.00 for 5-10 minute telephone conversations with Medicaid members that are in response to inquiries about symptoms that are similar to that of COVID-19 and thus require triage.

F. Limit non-emergency medical transportation (NEMT)

EOHHS anticipates that if the COVID-19 becomes widespread in RI, there will be a limited number of transportation providers available to transport Medicaid members to their non-emergency medical appointments, and is concerned that this could result in medically fragile members experience adverse health outcomes. EOHHS currently administers their NEMT benefit through a brokerage program via a contract with MTM, Inc. As part of the ongoing active contract management of MTM, EOHHS closely monitors the capacity of the transportation providers. During the State of Emergency, if the number of transportation providers is reduced significantly, EOHHS proposes to instruct MTM to limit transportation of Medicaid members in a way that ensures essential visits are maintained. For example, EOHHS may prioritize transportation to appointments for dialysis, Medication-Assisted Treatment, and medical appointments with a physician over transportation to appointments that are less critical in nature such as to adult day or counseling (which could be performed via telehealth).

### **III. Goals and Objectives**

By limiting in-person meetings for person-centered care, EOHHS expects to prevent transmission of the novel coronavirus to workers and, in particular, to vulnerable Medicaid members.

By extending the time for 12-month reviews of person-centered plans, EOHHS expects to preserve limited staff time for reviews required due to a change in the Medicaid members' circumstances.

By extending level of care authorizations, EOHHS expects to protect beneficiaries and workers from any in-person interactions typically necessary to conduct a level of care review. In addition, this is expected to protect beneficiaries from unreasonable difficulty participating in level of care reviews that may occur if providers face staffing shortages during this crisis.

By modifying level of care determination assessment procedures, EOHHS expects to facilitate access to necessary institutional and home- and community-based care while reducing the likelihood that more health care workers and beneficiaries will be exposed to the novel coronavirus.

By allowing reimbursement for telephone-only telehealth and non-HIPAA compliant telehealth for primary and behavioral health care, EOHHS expects to facilitate access to care while reducing the likelihood that more health care workers and beneficiaries will be exposed to the novel coronavirus.

By covering telephone triage for COVID-19 treatment, EOHHS expects to facilitate access to COVID-19 testing and treatment while reducing the likelihood that more health care workers and beneficiaries will be exposed to the novel coronavirus.

By limiting NEMT to only those appointments that are critical to the member's health, EOHHS expects to prevent medically fragile members from experiencing adverse health outcomes due to shortages in transportation providers.

#### **IV. Enrollment and Financial Information**

The State does not anticipate that this waiver will affect enrollment in Medicaid.

#### **V. Cost-Effectiveness and Budget Neutrality**

In light of the novel coronavirus emergency, the Demonstration will be presumed to be budget neutral. Therefore, Rhode Island will not be required to provide or demonstrate budget neutrality through "without waiver" and "with waiver" expenditure data.

#### **VI. Waivers and Expenditure Authorities**

EOHHS seeks waiver of the following requirements of the Code of Federal Regulations:

- Person-Centered Planning Process 42 CFR 441.725(a)(3) – To the extent necessary to permit the planning process to take place in writing, by telephone, and/or by video conference rather than in person.
- Person-Centered Plan Review 42 CFR 441.725(c) – To postpone for six months any service plan reviews for which the twelve (12) month review period occurs during the novel coronavirus emergency.

- Telephone-only telehealth 42 CFR 410.78 – To permit reimbursement of telephone-only primary and behavioral health care for the duration of the novel coronavirus emergency.
- Non-HIPAA compliant telehealth 45 CFR 164.308(b) – To permit the reimbursement of non-HIPAA compliant telehealth for primary and behavioral health care for the duration of the novel coronavirus emergency.
- Limitation of NEMT 42 CFR 431.53 – To permit EOHHS to limit transportation of Medicaid members in a way that ensures essential visits are maintained if a shortage of transportation providers occur.

With respect to the extension of level of care authorizations, the State requests suspension of CMS’s expectation, stated in the Special Terms and Conditions for the State’s current 1115 waiver, Project No. 11-W-00242/1, that the State must conduct at least annually reevaluations of level of care or as specified in the approved waiver. See *Appendix K: Emergency Preparedness and Response*.

With respect to the modifications to the level of care determinations, the State requests suspension of CMS’s expectation, some of which are required under 42 CFR 441.365, that the State must conduct in-person level of care determinations for applicants or members that need institutional, home-and community-based services, and Katie Beckett. See *Appendix K: Emergency Preparedness and Response*.

With respect to the telephonic triage for COVID-19, EOHHS requests expenditure authority, under the authority of section 1115(a)(2) of the Social Security Act (the Act), that expenditures made by EOHHS for telephonic triage for COVID-19, which are not otherwise included as matchable expenditures under section 1903 of the Act shall, for the period of the State of Emergency, be regarded as expenditures under the state’s title XIX plan.

## **VII. Public Notice and Tribal Consultation Process**

Given that this request is intended to address an emergency, as declared by the President on March 13, 2020, the State seeks an exemption from the public notice process pursuant to 42 CFR 431.416(g). However, the State does intend to seek input from the public as well as various stakeholders in concert with the submission of this request, which will notify them of this proposal. Given the expedient nature of this emergency request, the State also requests modification of the tribal consultation process. The State is submitting a letter to the Tribal Chairs and Health Directors in concert with the submission of this request, which will notify them of this proposal.

## **VIII. Implementation Timeline**

The State expects to implement the provisions of this waiver immediately upon approval of the demonstration.