DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

MAY 15, 2020

Jennifer Langer Jacobs
Director, Department of Human Services
Division of Medical Assistance and Health Services
P.O. Box 712
Trenton, NJ 08625-0712

Dear Ms. Jacobs:

We are writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is approving New Jersey's request to update the "New Jersey FamilyCare Comprehensive Demonstration" (Project No. 11-W-00279/2) with the Emergency Preparedness and Response Appendix K in order to respond to the COVID-19 pandemic. This has been incorporated into the demonstration's Special Terms and Conditions as Attachment R.

The authorities that the state has requested in Attachment R are effective from March 01, 2020 through February 28, 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 R pages with this correspondence.
If you need assistance, feel free to contact Jack Nocito of my staff at (410) 786-0199 or by e-mail at Jack.Nocito@cms.hhs.gov.

Sincerely,

Angela D. Garner -S

Digitally signed by Angela D. Garner -S
Date: 2020.05.15 11:50:21 -04'00'

Angela D. Garner
Director
Division of System Reform Demonstrations

Enclosure

cc: Michael Cutler, State Monitoring Lead, CMS 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: STATE OF NEW JERSEY

B. Waiver Title(s): NJ FamilyCare (NJFC) Comprehensive Demonstration

C. Control Number(s):

11-W-00279/2

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

X	**Pandemic or Epidemic**
O	**Natural Disaster**
O	**National Security Emergency**
O	**Environmental**
O	**Other (specify):**

E. Brief Description of Emergency. *In no more than one paragraph each*, briefly describe the: 1) nature of emergency; 2) number of individuals affected and the state's mechanism to identify individuals at risk; 3) roles of state, local and other entities involved in approved waiver operations; and 4) expected changes needed to service delivery methods, if applicable. The state should provide this information for each emergency checked if those emergencies affect different geographic areas and require different changes to the waiver.

COVID-19 pandemic. This amendment will apply waiver-wide for each waiver included in this Appendix, to all individuals impacted by the virus or the response to the virus (e.g. closure of day programs, etc.)

F. Proposed Effective Date: Start Date: March 1, 2020 **Anticipated End Date:** February 28, 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:

These actions will apply across the waiver to all individuals impacted by the COVID-19 virus

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

N/A

Appendix K-2: Temporary or Emergency-Specific Amendment to Approved Waiver

Temporary or Emergency-Specific Amendment to Approved Waiver:

These are changes that, while directly related to the state's response to an emergency situation, require amendment to the approved waiver document. These changes are time limited and tied specifically to individuals impacted by the emergency. Permanent or long-ranging changes will need to be incorporated into the main appendices of the waiver, via an amendment request in the waiver management system (WMS) upon advice from CMS.

a. ☐ Access and Eligibility:

i. ☐ Temporarily increase the cost limits for entry into the waiver.
[Provide explanation of changes and specify the temporary cost limit.]

ii. ☐ Temporarily modify additional targeting criteria.
[Explanation of changes]

b. ☒ 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]

- The state requests permission to temporarily lift prior authorization requirements for any service authorized by the 1115 demonstration. This authority will be used at the discretion of the state, and only to the extent necessary to address health and welfare issues and provide access to care during the emergency period.
- The state requests relaxing benefit limitations around provision of Home Delivered Meals. Specifically, we request that up to two home-delivered meals per day be made available, when the state determines it is necessary to maintain beneficiaries in the community, regardless of whether the beneficiary satisfies the requirements for home-delivered meals specified within Attachment D of our approved STCs.
- Allow the Supports Program, Community Care Program, and Children's Support Services Programs services to exceed unit limits, where necessary to support members whose care has been disrupted by the emergency. Examples may include increasing daily allowed units to meet the needs of beneficiaries who would otherwise have been receiving day services (absent the emergency), or extending respite services beyond the ordinary 30 day limit in the event that a family member of a beneficiary is unable to provide care due to being diagnosed with COVID-19.

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]:

MLTSS, Supports Program,[1] Community Care Program, and Children's Support Services Programs:

To the extent necessary to maintain access to care, allow reimbursement to any Medicaid provider/facility for waiver services rendered off-site in an unlicensed facility during an emergency evacuation or closure. In addition, and to the extent necessary to maintain access to care, allow reimbursement for any Medicaid provider/facility for waiver services rendered offsite, in order to comply with social distancing. Examples might include (but are not limited to) an enrollee who is diagnosed with COVID-19 and is placed in a temporary quarantine center where the HCBS services are not normally provided, provision of services by adult day program providers in the home for members who have chosen to shelter in place, provision of services in a DDD Day Program site that has been temporarily repurposed as a residential facility, and provision of services to beneficiaries with developmental disabilities in a provider-managed home that is under development but not yet licensed, if necessary to maintain access to services. In the case of a not-yet-licensed provider-managed home, such a home must be owned by an approved DDD provider, have a certificate of occupancy, have furnishings, and have been approved by both DDD and the Office of Licensing for temporary occupancy. In the case of a DDD Day Program site that has been temporarily repurposed as a residential facility, the temporary site must be approved by the Office of Licensing, have sufficient bathroom facilities (showers/toilets), have a kitchen or identify how meals and snacks will be accessed, how privacy will be maintained, what types of entertainment will be available, and identify what the types of beds will be available.

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.

[1] For the purposes of this submission, "Supports" refers to the demonstration program for individuals 21+. When the Children's Support Services programs are meant to be included, this will be indicated separately.

MLTSS: Payment to beneficiaries' family members for provision of personal care assistance (PCA) services in the event of disruption to ordinary sources of care such as school based services, medical day care services, or PCA agency services due to workforce shortage. Such payments must be approved on an as needed basis by the state.

Support Program and Community Care Program: Temporarily expand family members eligible to render Community Based and Individual Supports to include parents, spouses, and guardians to adjust for workforce shortages.

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.]

- MLTSS
    - Allow staff of Medical Day Cares to provide Home Delivered Meals (limited to two meals per day), PCA, and/or clinical check-in to affected members. Meals, PCA, and clinical check-in would only be provided upon member request. PCA and clinical check-in services would be provided only by those Medical Day Care staff who possess appropriate credentials and are qualified to provide such services. This flexibility would be utilized in the event of a Medical Day Care closing, or to support members who are sheltering in their homes.
    - With the approval of the state, allow home delivered meals (limited to two meals per day) to be provided by any properly certified food distribution service, in either meal or grocery form.
    - As approved by the state, allow individuals with alternative professional qualifications to receive Medicaid reimbursement for Personal Care Assistance services (also applicable to State Plan members), in the event of staffing shortages or barriers to access. Alternative professional qualifications may include employment in a direct service role by a Medical Day Care provider where the center is closed and staff are able to provide personal care assistance services in a member's home or completion of 50% of clinical and classroom hours required for certification as a Personal Care Assistant by the Department of Health.
- Supports Program & Community Care Program
    - Allow temporary modification, not to exceed one year, of the following requirements at the discretion of the state, to the extent necessary to maintain a sufficient workforce:
        - For Individual Supports and Community Based Supports temporarily modify timelines for obtaining training requirements, criminal background checks, fingerprinting, staff physicals, and PPD testing.
    - Temporarily modify the Board Certified Behavioral Analyst (BCBA) certification requirement from Behavioral Supports in anticipation that individuals may present with the need for behavior guidelines/plans due to day facility closures and the need to remain quarantined in home for health and safety. The remaining requirements for Behavioral Supports remain intact:
        - Have demonstrated experience in positive behavior support and/or applied behavior analysis; and
        - Have 1 year working with people with developmental disabilities

ii. ☒ Temporarily modify provider types.

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

See above. Allowing additional providers (potentially with alternative qualifications) to offer various community-based services. Examples include MDC staff delivering meals or performing PCA tasks, or day services staff providing individual or community based supports in provider managed or own home settings.

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.]

Allow the modification of certain facility licensure requirements for Children's Support Services Program residential treatment settings to the extent necessary to maintain access to care. Specific waivers may include (but are not necessarily limited to) requirements around square footage, or required kitchen facilities. This flexibility will be offered in instances where a licensed provider temporarily delivers services at an alternative location within a site or an alternative site (potentially with a different address) within an agency. The Department of Children and Families, based on requests from residential treatment providers, will grant these flexibilities on a case-by-case basis.

For Community Care Program, temporarily suspend routine residential agency licensing inspections to ensure the safety of staff and service recipients. Such suspension will not exceed six months. This suspension will apply to routine inspections only; inspections will continue for emergent situations such as a new home. Video or telephonic check-in's will occur if there are identified concerns during the temporary suspension of routine inspections. A revised licensing schedule will be developed once face-to-face contacts are not a health risk. In addition, for residential providers, temporarily modify the number of individuals allowed to reside in a licensed setting, in order to ensure the health and safety of individuals receiving services. For example, the number of individuals might be modified to allow individuals to move from one group home to a different group home, operated by the same provider, in order to have dedicated homes for individuals who have tested positive and/or negative for COVID-19. The Division of Developmental Disabilities, Office of Licensing will be notified of any such movements.

For the Supports Program and Community Care Program temporarily suspend day service facilities certification audits as a result of facility closures. A revised day service facilities certification schedule will be developed once the facilities re-open.

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.]

Rate increases are limited to Community Care Program providers of daily-rate Individual Supports, which are generally licensed group homes and supervised apartments. The rate increase is required due to the closure of congregate day habilitation programs. Due to this closure, residential providers were required to add additional staffing hours to their programs in order to support beneficiaries during the day. Effective March 17th through April 30th, payments will be increased by 20%. (Subsequent to April 30th, rates may be modified through a separate public notice process.) In order to make enhanced payment on a timely basis, and avoid the need for time-consuming systems changes, additional payments will be calculated in the aggregate (at the provider level) based on recent claims history, and be distributed via bi-weekly payments.

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]

Temporarily modify critical incident reporting requirements in STC 51, only to the extent they are impractical to implement during the emergency period. Temporarily modify home and community based characteristics requirements in STC 51, to the extent necessary due to displacement or other disruption resulting from the emergency.

Supports Program and Community Care Program: Temporarily replace face-to-face investigation interviews with telephonic contacts. Agencies must continue to report and investigate incidents in accordance with existing requirements. However, for minor incidents we are requesting to temporarily extend agency investigations and plan of correction submissions timelines by 60 days. An additional extension of 60 days may be requested for extenuating circumstances.

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.]

MLTSS, Community Care Program, Supports Program, and Children's Support Services Programs:

For members who are temporarily in a hospital or other institution due to COVID-19, we are requesting HCBS be allowed to continue where necessary and to the extent such services are not directly provided by the institution. An example might be a member who is temporarily placed in a quarantine facility, but may require ongoing supportive services. Services provided may include Behavioral Health Services, Mental Health Services, Cognitive Therapies, Occupational Therapy, Physical Therapy, Speech/Language Therapy, Community-Based Supports (Supports Program), and Individual Supports (Community Care Program), and Personal Care Assistant services. Payment will only be made for such services for up to 30 consecutive days.

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

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

The state requests the authority to offer retention payments for waiver providers who render habilitation and personal care services when beneficiaries are hospitalized, or otherwise unable to receive ordinary care, due to COVID-19. This includes instances where such providers have been required to close based on local, state, or federal medical or public health guidance. Such payments may continue for up to 30 consecutive days. Note that while we are requesting this authority in order to prepare for all eventualities, actual retainer payments will be contingent on (a) identified need based on monitoring of delivery system, and (b) state funding availability. In addition, retainer payments will be limited to situations where providers are not otherwise receiving reimbursement for services provided on a modified basis (e.g. for telehealth), and the state will implement processes to monitor and prevent duplication of billing.

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.]

The state requests an expedited enrollment process for self-directed care, including allowing telephonic enrollment in lieu of face-to-face. This is intended to ensure timely access to HCBS services due to staff shortages within PCA agency/AMDC providers due to COVID-19. The state is not requesting any expansion of the categories of services eligible to be delivered through self-direction.

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]:*

MLTSS: Services including Cognitive Rehabilitative Therapy, Occupational Therapy, Physical Therapy, Speech/Language Therapy, Structured Day and Supported Day services – as specified in the MLTSS Service Dictionary, and Medical Day Center wellness calls to members who can no longer attend Medical Day.

Children's Support Services Program services including social and emotional learning, interpreter services, individual supports, intensive in community clinical/therapeutic services, and intensive in community behavioral services.

Supports Program and Community Care Program: Allow the state discretion to shift from face-to-face service delivery to telephonic or telehealth instruction for the following waiver services: assistive technology, behavioral supports, career planning, community inclusion services, community based supports, cognitive rehabilitation therapy, day habilitation, individual supports, interpreter services, natural supports training, occupational therapy, physical therapy, speech, language, hearing therapy, support coordination, supported employment, and supports brokerage.

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]*

      See K-2.d.(i) above

   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:

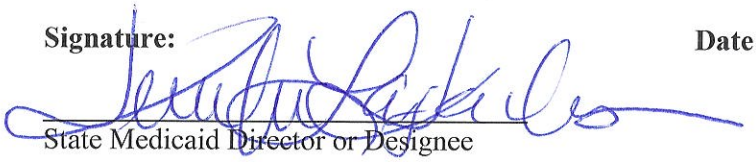
First Name: Stacy
Last Name Grim
Title: Demonstration Operations Manager
Agency: Division of Medical Assistance and Health Services
Address 1: 7 Quakerbridge Plaza
City Hamilton Township
State NJ
Zip Code 08619
Telephone: (609) 588-2600
E-mail Stacy.Grim@dhs.state.nj.us
Fax Number

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

First Name:
Last Name
Title:
Agency:
Address 1:
Address 2:
City
State
Zip Code
Telephone:
E-mail
Fax Number

8. Authorizing Signature

Signature: **Date:**



State Medicaid Director or Designee

First Name:	Jennifer
Last Name	Langer Jacobs
Title:	Assistant Commissioner
Agency:	Division of Medical Assistance and Health Services
Address 1:	7 Quakerbridge Plaza
Address 2:	
City	Hamilton
State	NJ
Zip Code	08619
Telephone:	(609) 588-2600
E-mail	Jennifer.Jacobs@dhs.state.nj.us
Fax Number	

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:	Home Delivered Meals
Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:	
Service Definition (Scope)**:**	
Nutritionally balanced meals delivered to the participant's home when this meal provision is more cost effective than having a personal care provider prepare the meal. These meals do not constitute a full nutritional regimen, but each meal must provide at least 1/3 of the current Dietary Reference Intakes (DRIs) established by the Food & Nutrition Board of the National Academy of Sciences, and National Research Council.	
Specify applicable (if any) limits on the amount, frequency, or duration of this service:	
Allow up to two home delivered meals per a day (currently one meal is permitted)	

Provider Specifications				
Provider Category(s) *(check one or both)***:**	☐	Individual. List types:	☒	Agency. List the types of agencies:
				Area Agency on Aging (AAA) Title III Nutrition Program (Existing)
				Provider of Meal Service, who meets the criteria set forth in New Jersey Standards for the Nutrition Program for Older Americans, PM 2011-33, I-164, dated January 3, 2012. (Existing)
				Adult Day Health Service Provider (During public health emergency only)
Specify whether the service may be provided by *(check each that applies):*	☐	Legally Responsible Person	☐	Relative/Legal Guardian

Provider Qualifications (*provide the following information for each type of provider)*: For AAA Title III Programs and Provider, and providers who meet the criteria set forth in the New Jersey Standards, unchanged from qualifications specified in New Jersey's approved 1115 demonstration. For Adult Day Health Service Providers, identical to qualifications specified in New Jersey's state plan.

Provider Type:	License *(specify)*	Certificate *(specify)*	Other Standard *(specify)*

Verification of Provider Qualifications

Provider Type:	Entity Responsible for Verification:	Frequency of Verification

Service Specification					
Service Title:	Home Delivered Meals				
Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:					
Service Delivery Method					
Service Delivery Method *(check each that applies)*:	☐	Participant-directed as specified in Appendix E	☐	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.