

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



September 25, 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 your CMS project officer, Mr. Jack Nocito, of my staff, at (410) 786-0199 or by e-mail at [Jack.Nocito@cms.hhs.gov](mailto:Jack.Nocito@cms.hhs.gov).

Sincerely,

Angela D.  
Garner -S

Digitally signed by Angela  
D. Garner -S  
Date: 2020.09.24  
12:33:26 -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.<sup>1</sup> 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:           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):

<input checked="" type="checkbox"/>	<b>Pandemic or Epidemic</b>
<input type="checkbox"/>	<b>Natural Disaster</b>
<input type="checkbox"/>	<b>National Security Emergency</b>
<input type="checkbox"/>	<b>Environmental</b>
<input type="checkbox"/>	<b>Other (specify):</b>

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.) Note that this Appendix K submission is intended to be in addition to the previous Appendix K submission that CMS approved on May 15, 2020. It does not replace or invalidate that previously approved Appendix K.

**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]

**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.]

The state offers retention payments to congregate day facilities that render day habilitation and related services to individuals served under the Supports and Community Care Programs, operated by the Division of Developmental Disabilities. The state assures that the retainer payments are only for personal care services and day habilitation services that include personal care as a component. Such payments will be made for periods when such providers are unable to safely offer services 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 three discreet episodes of up to 30 consecutive days. Such episodes may follow each other without interruption – i.e. one 30-day episode may begin immediately after the conclusion of another. Retainer payments will be paid as a lump sum on a biweekly basis, and calculated as follows. For the first two weeks (10 days) of the initial episode for which retainer payments are made, they will be equal to 100% of average total Medicaid claims, based on the individual provider’s highest Medicaid claims month between July 2019-December 2019. For all subsequent periods, retainer payments will be equal to 75% of average total Medicaid claims, based on the individual provider’s highest Medicaid claims month between July 2019-December 2019.

In order to receive retainer payments, providers will be required to attest that (a) they acknowledge that such payments are subject to recoupment if inappropriate billing or duplicate payments occurred (or in periods of disaster, duplicate uses of available funding streams) as identified in a state audit or any other authorized third party review. (Note that “duplicate uses of available funding streams” means using more than one funding stream for the same purpose); (b) they will not lay off staff or reduce wages while receiving retainer payments; and (c) that they have not received funding from other sources that would exceed revenue for last full quarter prior to the public health emergency (PHE), or such that the retainer payments at the level provided by the State will result in revenue exceeding that of the quarter prior to the PHE. More specifically, in order to receive retainer payments, providers will be required to attest that they have 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. 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.

**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
  - i  Personal care services that only require verbal cueing
  - i  In-home habilitation
  - ix  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:** Stacy  
**Last Name:** Grim  
**Title:** Demonstration Operations Manager  
**Agency:** Division of Medical Assistance and Health Services  
**Address 1:** 7 Quakerbridge Plaza  
**Address 2:** Click or tap here to enter text.  
**City:** Hamilton Township  
**State:** NJ  
**Zip Code:** 08619  
**Telephone:** 609-588-2600  
**E-mail:** Stacy.Grim@dhs.state.nj.us  
**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:**

  
\_\_\_\_\_  
State Medicaid Director or Designee

**Date:**


9/8/2020

**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:** Click or tap here to enter text.  
**City** Hamilton  
**State** NJ  
**Zip Code** 08619  
**Telephone:** 609-588-2600  
**E-mail** Jennifer.Jacobs@dhs.state.nj.us  
**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
<b>Provider Qualifications</b> <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>	
<b>Verification of Provider Qualifications</b>				
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



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<sup>i</sup> 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.