

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



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## State Demonstrations Group

March 17, 2021

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

Dear Mr. Shaffer:

We are writing to inform you that the Centers for Medicare & Medicaid Services (CMS) is approving Rhode Island's January 14, 2021 request to extend the approval period of certain previously approved Attachment K authorities, which are part of the Rhode Island Comprehensive Demonstration (Project Number 11-W-00242/1), to respond to the COVID-19 public health emergency (PHE). This approval extends those authorities to six months after the end of the federal PHE. This extension has been incorporated into the demonstration's Special Terms and Conditions as Attachment K. Specifically, the state is requesting the extension of all previously approved Appendix K authorities with the following two exceptions: k-2(f) regarding temporary rate increases, which expired June 30, 2020 and k-2(m) regarding setting beneficiary's Home and Community-Based Service (HCBS) personal needs allowance under Post-Eligibility Treatment of Income standards to equal the individual's total income, which expired on February 26, 2021.

Regarding the Attachment K that was approved by CMS on September 3, 2020 to allow the state to make retainer payments for up to three episodes of up to 30 consecutive billing days per beneficiary for HCBS that have a personal care service component, this authority only applies to providers who have not already received these payments for a given beneficiary.

The authorities that CMS is approving in Attachment K are effective from January 27, 2021 through 6 months after the end of the federally declared COVID-19 PHE and will apply in all locations served by the demonstration for anyone impacted by COVID-19 who receives HCBS through the demonstration. We have included the approved Attachment K pages with this correspondence.

If you need assistance, feel free to contact your Project Officer, Kathleen O'Malley at (410) 786-8987 or by e-mail at [Kathleen.OMalley@cms.hhs.gov](mailto:Kathleen.OMalley@cms.hhs.gov).

Sincerely,



Lisa Marunycz  
Deputy Director  
Division of System Reform Demonstrations

Enclosure

cc: Joyce Butterworth, 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 amendment 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. This appendix may be completed retroactively as needed by the state.

## Appendix K-1: General Information

### General Information:

A. State: Rhode Island

B. Waiver Title: Rhode Island Comprehensive Demonstration

C. Control Number:

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

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

<input checked="" type="radio"/>	Pandemic or Epidemic
<input type="radio"/>	Natural Disaster
<input type="radio"/>	National Security Emergency
<input type="radio"/>	Environmental
<input type="radio"/>	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.

The State of Rhode Island is experiencing a state of emergency due to the novel coronavirus disease (COVID-19). In order to slow the spread of the virus, federal and state public health officials are encouraging "social distancing," which means the entire State population has been affected by the need to reduce contact with others to the extent possible.

**F. Proposed Effective Date: Start Date: 01/27/2021 Anticipated End Date: Six (6) months post the end of the federally declared COVID-19 Public Health Emergency**

**G. Description of Transition Plan.**

All activities will take place in response to the impact of COVID-19 as efficiently and effectively as possible based upon the complexity of the change.

**H. Geographic Areas Affected:**

Statewide

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

N/A

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

**Temporary or Emergency-Specific Amendment to Approved Waiver:**

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

**a. \_\_\_ Access and Eligibility:**

**i. \_\_\_ Temporarily increase the cost limits for entry into the waiver.**

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

**ii. \_\_\_ Temporarily modify additional targeting criteria.**

[Explanation of changes]

**b. X Services**

**i. \_\_\_ Temporarily modify service scope or coverage.**

[Complete Section A- Services to be Added/Modified During an Emergency.]

ii.  X  **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]

Residential/ Community-Based Day Habilitation, Supported Living Arrangements and Independent Living

1. Service definition limitations on the number of people served in each licensed or unlicensed home may be exceeded.
2. Shift nursing may be provided as a discrete service during the provision of residential habilitation, life sharing and supported living services to ensure participant health and safety needs can be met.
3. Supplemental Habilitation can be provided, without requesting a variance, during the provision of licensed residential habilitation, licensed life sharing and supported living services to address the increased needs of individuals affected by the epidemic/pandemic or increased number of individuals served in a service location. Supplemental habilitation may be used to supplement staffing in the residential home itself or support a participant while the participant stays in the home of friends or family.

Respite

1. Remove all respite limits to meet the immediate health and safety needs of participants.

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]:

EOHHS proposes to permit payment to all HCBS providers, including providers of home-based services for children with special needs, in alternative settings where the setting otherwise authorized is not available due to the COVID-19 emergency.

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

[Empty box for 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.]

Residential/ Community-Based Day Habilitation Shared Living and Independent Living

1. Maximum number of individuals served in a service location may be exceeded to address staffing shortages or accommodate use of other sites as quarantine sites.
2. Remove staffing ratios, as required by payment methodology, due to staffing shortages.
3. The requirement to provide services in community locations is suspended.

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

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 will only abbreviate the evaluation to the extent necessary to avoid face-to-face contact during the Emergency.

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.

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. If for any reason a reevaluation is needed during the State of Emergency, EOHHS proposes to use written, telephonic, and/or video conference methods to conduct the reevaluation, as appropriate for the individual beneficiary. EOHHS will only abbreviate such a reevaluation to the extent necessary to avoid face-to-face contact during the Emergency.

**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.]

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.

The use of e-signatures that meets privacy and security requirements will be added as a method for the participant or legal guardian signing the ISP (or other service plan) to indicate approval of the plan. Where preferred by the participant or legal guardian, documents will be sent by mail for signature. Services may start while waiting for the signature to be returned to the case manager, whether electronically or by mail. Signatures will include a date reflecting the ISP (or other service plan) meeting date. These changes will be implemented for new person-centered plans, revisions to existing plans due to changes in the individual's needs or circumstances, and annual reviews of these plans.

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. These reviews will be conducted remotely, using written, telephone, and/or video conference communication as appropriate for the individual.

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

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

[Specify the services.]

**j. X Temporarily include retainer payments to address emergency related issues.**

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

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

Limit retainer payments to a reasonable amount and ensure recoupment if other resources, once available, are used for the same purpose;

- The retainer payment shall not exceed the payment for the relevant service;
- Collect an attestation from the provider acknowledging that retainer payments will be subject to recoupment if inappropriate billing or duplicate payments for services occurred (or in periods of disaster, duplicate uses of available funding streams which means using more than one funding stream for the same purpose.), as identified in a state or federal audit or any other authorized third party review;
- Require an attestation from the provider that it will not lay off staff, and will maintain wages at existing levels;
- Require an attestation from the provider that they had not received funding from any other sources, including but not limited to unemployment benefits and Small Business Administration loans, that would exceed their revenue for the last full quarter prior to



- the PHE, or that the retainer payments at the level provided by the state would not result in their revenue exceeding that of the quarter prior to the PHE;
- If a provider had not already received revenues in excess of the pre-PHE level but receipt of the retainer payment in addition to those prior sources of funding results in the provider exceeding the pre-PHE level, any retainer payment amounts in excess would be recouped; and
  - If a provider had already received revenues in excess of the pre-PHE level, retainer payments are not available.

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

Assumptions: Service Description	<i>Reduced by this %</i>
Respite	0%
Comm Based Supports	75%
Job Coaching	75%
Day Program	77.0%
Job Retention	75%
Self-directed Goods and Services	75%
Prevocational Training	75%
Self-Direct	0%
Natural Supports	0%
Residential – Group Home	15.5%
Residential – Shared Living	30%
Home Health	0%
PERS	0%

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

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

- Respite
- Comm Based Supports
- Job Coaching
- Day Program
- Job Retention
- Self-directed Goods and Services
- Prevocational Training

- Self-Direct
- Natural Supports
- Residential – Group Home
- Residential – Shared Living
- Home Health
- PERS

**k. \_\_\_ Temporarily institute or expand opportunities for self-direction.**

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

**l. \_\_\_ Increase Factor C.**

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

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

Appendix K Addendum: COVID-19 Pandemic Response

**1. HCBS Regulations**

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

**2. Services**

- a.  Add an electronic method of service delivery (e.g., telephonic) allowing services to continue to be provided remotely in the home setting for:
- i.  Case management
  - ii.  Personal care services that only require verbal cueing
  - iii.  In-home habilitation

- iv.  Monthly monitoring (i.e., in order to meet the reasonable indication of need for services requirement in 1915(c) waivers).
- v.  Other *[Describe]*:

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

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

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

**4. Provider Qualifications**

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

- d.

EOHHS proposes to permit payment for family caregivers and legally responsible individuals to provide HCBS, including all home-based services for children with special needs, when the non-family caregiver is not able to provide the service, either due to safety concerns (on the part of the non-family caregiver or the HCBS recipient) or other direct impacts of the emergency, such as his or her own dependent care obligations related to the state of emergency. To ensure that individuals receive necessary services as authorized in the plan of care, family caregivers/legally responsible individuals will be required to document case notes reflecting the services they provide, as well as an attestation that they have reviewed the plan of care and will provide the supports in the plan to the extent possible given the public health emergency and will identify safe alternatives where necessary and possible. To ensure that payments are made for services rendered, EOHHS will utilize the self-directed plan process. Under this process, individuals who self-direct their services go through a Fiscal Intermediary Agency, which reviews employment paperwork and time sheets submitted by the parent/guardian.

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

## 5. Processes

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

## Contact Person(s)

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

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

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

**First Name:** Click or tap here to enter text.  
**Last Name** Click or tap here to enter text.  
**Title:** Click or tap here to enter text.  
**Agency:** Click or tap here to enter text.  
**Address 1:** Click or tap here to enter text.  
**Address 2:** Click or tap here to enter text.  
**City** Click or tap here to enter text.  
**State** Click or tap here to enter text.  
**Zip Code** Click or tap here to enter text.  
**Telephone:** Click or tap here to enter text.  
**E-mail** Click or tap here to enter text.  
**Fax Number** Click or tap here to enter text.

## 8. Authorizing Signature

**Signature:**

**Date:** 01/14/2021

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

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

## Section A---Services to be Added/Modified During an Emergency

Complete for each service added during a time of emergency. For services in the approved waiver that the state is temporarily modifying, enter the entire service definition and highlight the change. State laws, regulations and policies referenced in the specification should be readily available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

Service Specification			
Service Title:	Personal Protective equipment, including gloves and masks		
<i>Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:</i>			
Service Definition (Scope):			
EOHHS proposes to add personal protective equipment – specifically gloves and masks – for family caregivers and legally responsible individuals providing services pursuant to the Appendix K Addendum, Item 4.			
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 checked="" type="checkbox"/>	Individual. List types:	<input type="checkbox"/> Agency. List the types of agencies:
		Family caregivers and legally responsible individuals	
Specify whether the service may be provided by <i>(check each that applies):</i>	<input checked="" type="checkbox"/>	Legally Responsible Person	<input checked="" 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>
Family caregivers and legally responsible individuals	N/A	N/A	Must be trained in the individual's ISP.
Verification of Provider Qualifications			
Provider Type:	Entity Responsible for Verification:		Frequency of Verification
Service Delivery Method			

**Service Specification**

**Service Title:** Personal Protective equipment, including gloves and masks

*Complete this part for a renewal application or a new waiver that replaces an existing waiver. Select one:*

Family caregivers and legally responsible individuals	EOHHS	Once annually

**Service Delivery Method**

<b>Service Delivery Method</b> <i>(check each that applies):</i>	<input checked="" type="checkbox"/>	Participant-directed as specified in Appendix E	<input type="checkbox"/>	Provider managed
	<input type="checkbox"/>		<input type="checkbox"/>	
	<input type="checkbox"/>		<input type="checkbox"/>	

