

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



SMDL # 20-002
RE: COVID-19 Public
Health Emergency Section
1115(a) Opportunity for
States

March 22, 2020

Dear State Medicaid Director:

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Social Security Act (Act) (as amended (42 U.S.C. 1320b-5)). On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6:00 PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. We note that the emergency period will terminate, and section 1135 waivers will no longer be available, upon termination of the public health emergency, including any extensions.

In an effort to assist states with addressing the COVID-19 public health emergency, CMS has developed a new section 1115 demonstration opportunity available to states under title XIX (Medicaid) of the Act. Under this demonstration opportunity, effective retroactively to March 1, 2020, states may select from a variety of options to deliver the most effective care to their beneficiaries in light of the COVID-19 public health emergency. Section 1115(a) demonstration authorities approved pursuant to this opportunity are time limited, and will expire no later than 60 days after the end of the public health emergency.

State Medicaid Director

The COVID-19 section 1115 demonstration opportunity can make available a number of authorities and flexibilities to assist states in enrolling and serving beneficiaries in Medicaid and to focus state operations on addressing the COVID-19 pandemic.

The COVID-19 demonstration opportunity can be used by states to extend home and community-based services (HCBS) flexibilities—available under the Disaster Relief Appendix K for 1915(c) to beneficiaries receiving 1915(c)-like services under section 1115 demonstrations—to beneficiaries receiving long-term supports and services (LTSS) under Medicaid state plan authorities described in section 1915(i) and 1915(k) of the Act. The demonstration opportunity can also be used by states to accept self-attestation of applicant resources, which will assist Medicaid agencies in making streamlined eligibility determinations for some vulnerable populations.

In light of the unprecedented emergency circumstances associated with the COVID-19 pandemic and consistent with the President’s proclamation that the COVID-19 outbreak constitutes a national emergency consistent with section 1135 of the Social Security Act (Act), and the time-limited nature of demonstrations that would be approved under this opportunity, the Department will not require States to submit budget neutrality calculations for section 1115 demonstration projects designed to combat and respond to the spread of COVID-19. In general, CMS has determined that the costs to the Federal Government are likely to have otherwise been incurred and allowable. States will still be required to track expenditures and should evaluate the connection between and cost effectiveness of those expenditures and the state’s response to the public health emergency in their evaluations of demonstrations approved under this opportunity.

Participating states will be required to complete a final report, which will consolidate all required monitoring and evaluation deliverables, one year after the end of the COVID-19 section 1115 demonstration authority. This report will capture data on demonstration implementation, lessons learned, and best practices for similar situations. CMS will provide additional guidance on the structure and content of the report.

Pursuant to 42 CFR 431.416(g), CMS has determined that the existence of unforeseen circumstances resulting from the COVID-19 public health emergency warrants an exception to the normal state and federal public notice procedures to expedite a decision on a proposed COVID-19 section 1115 demonstration. States applying for a COVID-19 section 1115 demonstration are not required to conduct a public notice and input process. CMS is also exercising its discretionary authority to expedite its normal review and approval processes to render decisions on state applications for COVID-19 section 1115 demonstrations. CMS will post all section 1115 demonstrations approved under this COVID-19 demonstration opportunity on the Medicaid.gov website.

Attached is a template that states may use to request a section 1115 demonstration project to combat the COVID-19 public health emergency. We will review state requests pursuant to this demonstration opportunity on a state-by-state basis.

State Medicaid Director

We recognize that this is a dynamic situation, and both states and CMS are updating their strategies to meet evolving needs. CMS may update this section 1115 demonstration opportunity to respond to Congressional or other action, as necessary. For more information about using section 1115(a) demonstration authority to support state efforts in combatting the COVID-19 public health emergency, please contact Judith Cash, Director, State Demonstrations Group, at 410-786-9686.

Sincerely,

Calder Lynch
Deputy Administrator and Director
Center for Medicaid and CHIP Services

Attachment

COVID-19 Section 1115(a) Demonstration Application Template

The State of Massachusetts, Department of Executive Office of Health and Human Services proposes emergency relief as an affected state, through the use of section 1115(a) demonstration authority as outlined in the Social Security Act (the Act), to address the multi-faceted effects of the novel coronavirus (COVID-19) on the state's Medicaid program.

I. DEMONSTRATION GOAL AND OBJECTIVES

Effective retroactively to March 1, 2020, the State of Massachusetts, seeks section 1115(a) demonstration authority to operate its Medicaid program without regard to the specific statutory or regulatory provisions (or related policy guidance) described below, in order to furnish medical assistance in a manner intended to protect, to the greatest extent possible, the health, safety, and welfare of individuals and providers who may be affected by COVID-19.

II. DEMONSTRATION PROJECT FEATURES

- A. Eligible Individuals:** The following populations will be eligible under this demonstration. To the extent coverage of a particular service is available for a particular beneficiary under the State plan, such coverage will be provided under the State plan and not under demonstration authority.

Check to Apply	Population
X	Current title XIX State plan beneficiaries
X	Current section 1115(a)(2) expenditure population(s) eligible for/enrolled in the following existing section 1115 demonstrations: [<i>state to identify here</i>] Project Number II-W-00030/I

Check to Apply	Population

B. Benefits: The state will provide the following benefits and services to individuals eligible under this demonstration. To the extent coverage of a particular service is available for a particular beneficiary under the State plan, such coverage will be provided under the State plan and not under demonstration authority.

Check to Apply	Services
X	Current title XIX State plan benefits
X	<p>Others as described here: <i>[state to describe here]</i></p> <p>Project Number II-W-00030/I benefits</p> <p>Section 1915(c) of the Social Security Act (“HCBS waiver”) benefits</p> <p>MA.0059.R07.01 MA.0359.R04.01 MA.1027.R01.02 MA.1028.R01.01 MA.40701.R02.02 MA.40702.R02.01 MA.0826.R02.01 MA.0827.R02.01 MA.0828.R02.01 MA.40207.R02.02</p>

C. Cost-sharing

Check to Apply	Cost-Sharing Description
	There will be no premium, enrollment fee, or similar charge, or cost-sharing (including copayments and deductibles) required of individuals who will be enrolled in this demonstration that varies from the state's current state plan.
X	Other as described here: <i>[state to insert description]</i> For those experiencing financial hardship and request a waiver, waive all income deductibles.

D. Delivery System:

Check to Apply	Delivery System Description
X	Except as noted below, the health care delivery system for the provision of services under this demonstration will be implemented in the same manner as under the state's current state plan.
X	Other as described here: <i>[state to insert description]</i> The state requests the following modifications to the delivery system and DSRIP authority in its existing 1115 demonstration: Modify ACO, CP, and CSA quality program timeline requirements with regards to PY 2019 clinical data collection and auditing during 2020. Modify ACO, CP, and CSA financial accountability for cost and quality for PY 2020 Extend the deadline for the DSRIP Midpoint Assessment (due 9/30/20) by two months.

III. EXPENDITURE AND ENROLLMENT PROJECTIONS

A. Enrollment and Enrollment Impact.

- i. State projects that approximately 1.8M individuals as described in section II will be eligible for the period of the demonstration. The overall impact of this section 1115 demonstration is that these individuals, for the period of the demonstration, will continue to receive HCBS or coverage through this demonstration to address the COVID-19 public health emergency.

B. Expenditure Projection.

The state projects that the total aggregate expenditures under this section 1115 demonstration is \$ 581.1M, of which \$528M is attributable to meeting the Maintenance of Effort requirements of the Families First Coronavirus Response Act.

In light of the unprecedented emergency circumstances associated with the COVID-19 pandemic and consistent with the President’s proclamation that the COVID-19 outbreak constitutes a national emergency consistent with section 1135 of the Act, and the time-limited nature of demonstrations that would be approved under this opportunity, the Department will not require States to submit budget neutrality calculations for section 1115 demonstration projects designed to combat and respond to the spread of COVID-19. In general, CMS has determined that the costs to the Federal Government are likely to have otherwise been incurred and allowable. States will still be required to track expenditures and should evaluate the connection between and cost effectiveness of those expenditures and the state’s response to the public health emergency in their evaluations of demonstrations approved under this opportunity.

IV. APPLICABLE TITLE XIX AUTHORITIES

The state is proposing to apply the flexibilities granted under this demonstration opportunity to the populations identified in section II.A above.

Check to Apply	Program
X	Medicaid state plan
X	Section 1915(c) of the Social Security Act (“HCBS waiver”). Provide applicable waiver numbers below: MA.0059.R07.01 MA.0359.R04.01 MA.1027.R01.02 MA.1028.R01.01 MA.40701.R02.02 MA.40702.R02.01 MA.0826.R02.01 MA.0827.R02.01 MA.0828.R02.01

Check to Apply	Program
	MA.40207.R02.02
X	Section 1115(a) of the Social Security Act (i.e., existing, approved state demonstration projects). Provide applicable demonstration name/population name below: Project Number II-W-00030/I
	Other: [<i>State to describe here</i>]

V. WAIVERS AND EXPENDITURE AUTHORITIES

A non-exhaustive list of waiver and expenditure authorities available under this section 1115 demonstration opportunity has been provided below. States have the flexibility to request additional waivers and expenditure authorities as necessary to operate their programs to address COVID-19. If additional waivers or expenditure authorities are desired, please identify the authority needed where indicated below and include a justification for how the authority is needed to assist the state in meeting its goals and objectives for this demonstration. States may include attachments as necessary. Note: while we will endeavor to review all state requests for demonstrations to combat COVID-19 on an expedited timeframe, dispositions will be made on a state-by-state basis, and requests for waivers or expenditure authorities in addition to those identified on this template may delay our consideration of the state’s request.

A. Section 1115(a)(1) Waivers and Provisions Not Otherwise Applicable under 1115(a)(2)

The state is requesting the below waivers pursuant to section 1115(a)(1) of the Act, applicable for beneficiaries under the demonstration who derive their coverage from the relevant State plan. With respect to beneficiaries under the demonstration who derive their coverage from an expenditure authority under section 1115(a)(2) of the Act, the below requirements are identified as not applicable. Please check all that apply.

Check to Waive	Provision(s) to be Waived	Description/Purpose of Waiver
X	Section 1902(a)(1)	To permit the state to target services on a geographic basis that is less than statewide.

Check to Waive	Provision(s) to be Waived	Description/Purpose of Waiver
X	Section 1902(a)(8), (a)(10)(B), and/or (a)(17)	To permit the state to vary the amount, duration, and scope of services based on population needs; to provide different services to different beneficiaries in the same eligibility group, or different services to beneficiaries in the categorically needy and medically needy groups; and to allow states to triage access to long-term services and supports based on highest need.
X	Section 1902(a)(30)(A), 1902(a)(13)(A), and/or 1902(a)(6)	In order to make hospital payments necessary to maintain continued access to health care services during the national emergency, waive hospital upper payment limit and demonstration requirements for federal fiscal years during which the public health emergency is in effect, by increasing the Medicare UPLs by up to an additional 15% using the state's FY20 Hospital UPLs submitted to CMS by the state as of the first day of the emergency period as the baseline data source, and by allowing combined inpatient/outpatient hospital UPL demonstrations.
X	Section 1902(a)(23)	To waive the requirements of free choice of providers to allow the state to establish a limited network of telehealth network providers and ambulance providers providing mobile testing services.
X	Section 1902(a)(38), 1902(a)(77), and/or 1902(kk)	To waive the requirements related to ordering, referring, and prescribing providers and disclosure requirements.
X	Section 1905(a)(29)(B)	To permit the state to make payments for care and services delivered in Institutions for Mental Disease (IMDs)
[check box]	[insert here the statutory section of the Social Security Act]	[insert here the description/purpose of waiver]

B. Expenditure Authority

Pursuant to section 1115(a)(2) of the Act, the state is requesting that the expenditures listed below be regarded as expenditures under the state plan.

Note: Checking the appropriate box(es) will allow the state to claim federal financial participation for expenditures that otherwise would be ineligible for federal match.

Check to Request Expenditure	Description/Purpose of Expenditure Authority
X	<p>Allow for self-attestation or alternative verification of individuals' eligibility (income/assets) and level of care to qualify for long-term care services and supports.</p> <p>Where electronic verification is not successful and document verification is not readily accessible, the agency will accept self-attestation for all eligibility factors needed to determine eligibility, except citizenship and immigration and clinical eligibility as described below. This will apply to all MassHealth applicants and members, including under both MAGI and non-MAGI methodologies.</p> <p>We will accept self-attestation of clinical eligibility or level of care to qualify for long-term care services and supports only in the case it is needed to expedite admission/transfer to one of the state's COVID-19 step-down nursing facilities.</p>
X	<p>Long-term care services and supports for impacted individuals even if services are not timely updated in the plan of care, or are delivered in alternative settings.</p>
X	<p>Ability to pay higher rates for HCBS providers in order to maintain capacity.</p>
X	<p>The ability to make retainer payments for the duration of COVID-19 related closures to certain habilitation and personal care providers that provide services in community-based day programs that have been required to close due to public health orders related to the COVID-19 crisis. . For example, adult day health provider sites have closed due to isolation orders, and may go out of business and not be available to provide necessary services and supports post-pandemic. This includes the ability to make retainer payments to both state plan community-based habilitation providers and state plan community-based personal care providers, as well as 1915(c) waiver community-based habilitation providers and 1915(c) waiver community-based personal care providers. For members who are enrolled in managed care, payments may be made to providers through the member's managed care plan.</p>
	<p>Allow states to modify eligibility criteria for long-term services and supports.</p>
	<p>The ability to reduce or delay the need for states to conduct functional assessments to determine level of care for beneficiaries needing LTSS.</p>
X	<p>Other: Suspend the current 1115 waiver to provide 10-day retroactive eligibility, upon applicant request. Instead, for the duration of this COVID-</p>

Check to Request Expenditure	Description/Purpose of Expenditure Authority
	19 1115 emergency waiver, the agency will provide 90 days retroactive eligibility for applicants, upon applicant request, in accordance with the statute without such 10-day retroactive eligibility waiver.
X	Other: For the new COVID-19 testing eligibility group, when the beneficiary is unable to provide citizenship or immigration status documentation due to the COVID-19 emergency, accept self-attestation for citizenship and immigration status because the state is unable to verify citizenship and immigration using data sources.
X	Other: The ability to make hospital payments necessary to maintain continued access to health care services during the national emergency, by increasing the Medicare UPLs by up to an additional 15% using the state's FY20 Hospital UPLs submitted to CMS by the state as of the first day of the emergency period as the baseline data source, for federal fiscal years during which the public health emergency is in effect, and by allowing combined inpatient/outpatient hospital UPL demonstrations, notwithstanding upper payment limit and demonstration requirements established under Sections 1902(a)(30)(A), 1902(a)(13)(A), and/or 1902(a).
X	Other: The ability to make hospital payments necessary to maintain continued access to health care services during the national emergency, in amounts that exceed hospital-specific inpatient charges by up to an additional 15% for federal fiscal years during which the public health emergency is in effect, notwithstanding the charge limit established under Section 1903(i)(3).
X	Other: The ability to make hospital payments necessary to maintain continued access to health care services during the national emergency, in amounts that exceed hospital-specific limits specified in the state plan, notwithstanding such limits.
X	Other: The ability to make payments for certain clinical laboratory services during the national emergency, notwithstanding the limit established under Section 1903(i)(7).
X	Other: The ability to make provider payments necessary to maintain continued access during the national emergency, in amounts that exceed provider-specific costs by up to an additional 15% for federal fiscal years during which the public health emergency is in effect using the most current cost reports available as of the first day of the emergency period, notwithstanding the requirements of STC 56 and Appendix H of the MassHealth 1115 Demonstration.

Check to Request Expenditure	Description/Purpose of Expenditure Authority
X	Other: The ability to make payments necessary to maintain continued access to health care services during the national emergency, in accordance with the attached version of Attachment E to the STCs.
X	Other: Expenditure authority to protect the coverage of all individuals who were active MassHealth members of as of 3/18/2020 (or are newly enrolled on or after 3/18/20) in order to comply with the requirements for additional FMAP under the Families First Coronavirus Response Act.
X	Other: Expenditure authority for services delivered in IMDs in order to maximize capacity at acute inpatient hospital settings needed to provide COVID-19 related care

VI. Public Notice

Pursuant to 42 CFR 431.416(g), the state is exempt from conducting a state public notice and input process as set forth in 42 CFR 431.408 to expedite a decision on this section 1115 demonstration that addresses the COVID-19 public health emergency.

VII. Evaluation Indicators and Additional Application Requirements

A. Evaluation Hypothesis. The demonstration will test whether and how the waivers and expenditure authorities affected the state’s response to the public health emergency, and how they affected coverage and expenditures.

B. Final Report. This report will consolidate demonstration monitoring and evaluation requirements. No later than one year after the end of this demonstration addressing the COVID-19 public health emergency, the state will be required to submit a consolidated monitoring and evaluation report to CMS to describe the effectiveness of this program in addressing the COVID-19 public health emergency. States will be required to track expenditures, and should evaluate the connection between and cost effectiveness of those expenditures and the state’s response to the public health emergency in their evaluations of demonstrations approved under this opportunity. Furthermore, states will be required to comply with reporting requirements set forth in 42 CFR 431.420 and 431.428, such as information on demonstration implementation, progress made, lessons learned, and best practices for similar situations. States will be required to track separately all expenditures associated with this demonstration, including but not limited to administrative costs and program expenditures, in accordance with instructions provided by CMS. CMS will provide additional guidance on the evaluation design, as well as on the requirements, content, structure, and submittal of the report.

VIII. STATE CONTACT AND SIGNATURE

State Medicaid Director Name: Amanda Cassel Kraft (Acting Medicaid Director)
Telephone Number: 617-573-1770
E-mail Address: Amanda.CasselKraft@state.ma.us

State Lead Contact for Demonstration Application: Kaela Konefal
Telephone Number: 617-573-1807

E-mail Address: Kaela.Konefal@state.ma.us

Authorizing Official (Typed): Daniel Tsai, Acting Secretary, Executive Office of Health & Human Services
Authorizing Official (Signature): _____
Date: _____

PRA Disclosure Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1148 (Expires 03/31/2021). The time required to complete this information collection is estimated to average 1 to 2 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. Your response is required to receive a waiver under Section 1115 of the Social Security Act. All responses are public and will be made available on the CMS web site. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850. ***CMS Disclosure*** Please do not send applications, claims, payments, medical records or any documents containing sensitive information to the PRA Reports Clearance Office. Please note that any correspondence not pertaining to the information collection burden approved under the associated OMB control number listed on this form will not be reviewed, forwarded, or retained. If you have questions or concerns regarding where to submit your documents, please contact Judith Cash at 410-786-9686.