



HEALTH SYSTEMS DIVISION

Kate Brown, Governor

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April 17, 2020

Calder Lynch, Deputy Administrator & Director
Judith Cash, Director of the State Demonstrations Group
Center for Medicaid & CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Mr. Lynch and Ms. Cash,

Thank you for your partnership as we address the many challenges related to the COVID-19 pandemic in Oregon. In my capacity as Medicaid Director of the Oregon Health Authority, I submit this urgent request for the Centers for Medicare and Medicaid Services (CMS) to approve an emergency demonstration project under Section 1115 of the Social Security Act (the Act).

Oregon is experiencing rapid spread of the Novel Coronavirus Disease (COVID-19) pandemic. As of April 17, 2020, there have been 1,736 confirmed cases of COVID-19 in Oregon, more than 400 hospitalizations, and 64 deaths.¹ COVID-19 now threatens the lives of thousands and has already placed significant strain on Oregon's healthcare system. The effects of this crisis are expected to continue for months, and will include increased treatment needs for the uninsured and insured alike, and significant swings in demand for healthcare services reflected in sharp increases for some providers and steep declines for others, including many of our most vulnerable Medicaid providers in rural areas. We also need to remain vigilant and prepared for the possibility that a worsened outbreak or local hot spots could overwhelm our physical capacity to treat patients, stretch thin our healthcare workforce, and/or exceed our supply of critical equipment. At the same time, postponing non-essential medical visits and clearing space in hospitals through social distancing and postponing elective surgery has created financial strains on many Medicaid providers, such as pediatricians, behavioral health, rural and safety-net hospitals, dentists, home and community-based care agencies, and tribal health facilities, who may lack the reserves to weather this storm. In addition, addressing COVID-19 requires

¹ Oregon Health Authority COVID-19 Dashboard:

https://public.tableau.com/profile/oregon.health.authority.covid.19#!/vizhome/OregonHealthAuthorityCOVID-19DataDashboard/COVID-19EPIConfirmed?:display_count=y&:toolbar=n&:origin=viz_share_link&:showShareOptions=false

investments which some providers cannot afford. Medicaid and CHIP have a key role to play in alleviating many of these challenges as the source of coverage for nearly one in four Oregonians—a fraction that is likely to increase in coming months—and as major payers for many critical health care providers in Oregon.

The State is using various emergency authorities that have been invoked under federal and State law, including the waivers approved by CMS under Section 1135 of the Act. However, the State requires additional federal flexibility and support that is available only through waivers under Section 1115 to quickly target critical funding to Medicaid providers and maintain access to needed services. In light of the rapidly evolving and unprecedented crisis presented by COVID-19, we urge CMS to review and approve expeditiously the attached application.

Specifically, Oregon seeks CMS approval under Section 1115 for a **COVID-19 Disaster Relief Fund** to offer emergency support our Medicaid and tribal providers at this critical time. This targeted relief will allow our Medicaid and tribal providers to confront unprecedented disruption in their workforce and patient revenue, rapidly implement new, expanded care delivery sites, modalities and access needed equipment as needed, act quickly to ensure access to testing and care for all residents, and mitigate any potential surge in demand for healthcare. While Congress has approved funding under the CARES Act that may partially address some of these challenges, this funding is limited and will not benefit many providers essential to Oregon's Medicaid program. Medicaid still has a critical role to play in providing targeted relief to individuals and providers beyond what is otherwise available through federal funding. Accordingly, the State requests a limited COVID-19 Disaster Relief Fund to provide targeted Medicaid-funded support in the following ways not fully addressed in the CARES Act:

- ***Preserving access to care in light of dramatic shifts in utilization.*** With extensive social distancing in place already for weeks, and expected to continue for months, patient utilization patterns are shifting dramatically—especially in light of the mandatory cancellation of elective cases and other non-essential services for a not-yet-known period of time. Providers will vary in their abilities to weather sharp declines in utilization, but many essential Medicaid and CHIP providers, like pediatricians, behavioral health, rural and safety-net hospitals, dentists, home and community-based care agencies, residential facilities, and tribal health facilities, already operate on slim margins and will require financial assistance to remain open. These providers often have few, if any, Medicare patients, making them ineligible for much of the relief under the CARES Act dispersed to date and are heavily dependent on Medicaid and/or CHIP revenue given the populations they serve.
- ***Adapting healthcare delivery to reflect the realities of COVID-19.*** Medicaid providers will need to be prepared to make significant unanticipated investments in, among other things, telemedicine platforms, bed reconfiguration, off-site screening venues, and quarantine/post-acute care sites, if the pandemic worsens in Oregon. Providers may also need to purchase additional respirators, ventilators, and personal protective equipment to treat patients. Providers will be required to apply directly to the U.S. Department of Health and Human Services to seek reimbursement for many of these expenditures under funding opportunities afforded by the CARES Act and to refund to the State any reimbursement under this 1115 waiver for any expenditure that is also reimbursed under the CARES Act. It is unclear whether the award process will meet the specific needs of Medicaid beneficiaries and providers. The State's COVID-19 Disaster Relief Fund

would be available to cover eligible expenses not reimbursed through the CARES ACT or other federal mechanisms.

Medicaid would cover the cost of a portion of expenses eligible for support from the COVID-19 Disaster Relief Fund appropriately allocated to Medicaid. Additionally, the State would require that entities receiving funds seek support from other available sources of federal and state funding, to ensure that Medicaid is the payer of last resort. Finally, all payments would be subject to audit.

Thank you for your prompt attention to this urgent matter. Please contact us immediately if you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Coyner", written in a cursive style.

Lori Coyner
Medicaid Director
Oregon Health Authority

COVID-19 Section 1115(a) Demonstration Application Template

The State of Oregon, Oregon Health Authority 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 Oregon, 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
✓	Current title XIX State plan beneficiaries
✓	Current section 1115(a)(2) expenditure population(s) eligible for/enrolled in the following existing section 1115 demonstrations: <ul style="list-style-type: none">The Oregon Health Plan (21-W-0013/10 and 11-W-00160/10)
✓	Current title XXI CHIP beneficiaries

- 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
✓	Current title XIX State plan benefits
✓	Others as described here: <ul style="list-style-type: none"> • Current title XXI benefits for title XXI beneficiaries

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.
	Other as described here:

D. Delivery System:

Check to Apply	Delivery System Description
✓	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.
	Other as described here:

III. EXPENDITURE AND ENROLLMENT PROJECTIONS

A. Enrollment and Enrollment Impact.

- i. State projects that approximately 1.07 M² individuals as described in section II are currently eligible, and this will increase at least 2% per month over 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 \$500 M, assuming a 5month duration of the emergency.

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 AND TITLE XXI 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
✓	Medicaid state plan
✓	Section 1915(c) of the Social Security Act (“HCBS waiver”). Provide applicable waiver numbers below: <ul style="list-style-type: none"> • 0375.R04.00 • 0185.R06.00 • 4-194.R04.00 • 0117.R06.00 • 40193.R04.00 • 0565.R02.00

2. <https://www.oregon.gov/DHS/BUSINESS-SERVICES/OFRA/ofradocuments/HSM%20Caseload%20Variance%20Report%20Mar%202020.pdf>

Check to Apply	Program
✓	Section 1115(a) of the Social Security Act (i.e., existing, approved state demonstration projects). Provide applicable demonstration name/population name below: <ul style="list-style-type: none"> • The Oregon Health Plan (21-W-0013/10 and 11-W-00160/10)
✓	Other: <ul style="list-style-type: none"> • Current title XXI CHIP beneficiaries

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
✓	Section 1902(a)(1)	To permit the state to target services on a geographic basis that is less than statewide.
✓	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.

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
	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.
	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.
	Ability to pay higher rates for HCBS providers in order to maintain capacity.
	The ability to make retainer payments to certain habilitation and personal care providers to maintain capacity during the emergency. For example, adult day sites have closed in many states due to isolation orders, and may go out of business and not be available to provide necessary services and supports post-pandemic
	Allow states to modify eligibility criteria for long-term services and supports.
	The ability to reduce or delay the need for states to conduct functional assessments to determine level of care for beneficiaries needing LTSS.
✓	<p>Establish a COVID-19 Disaster Relief Fund that:</p> <ul style="list-style-type: none"> • Funds investments by providers necessary to adapt healthcare delivery to reflect the realities of COVID-19, including investments in telemedicine platforms, bed reconfiguration, off-site screening venues, and quarantine/post-acute care sites, and the purchase of additional respirators, ventilators, and personal protective equipment, as needed; and • Provides payments to providers, including rural hospitals, behavioral health providers, and other critical Medicaid providers, necessary to preserve access to care in light of dramatic shifts in utilization. <p>The COVID-19 Disaster Relief Fund would be retroactive to the date of the national public health emergency. All expenditures would be subject to appropriate cost allocation to Medicaid or other limits consistent with economy, efficiency, and access to care. Payments from the Fund would not count as patient service revenue. See attachment for additional detail.</p>

Check to Request Expenditure	Description/Purpose of Expenditure Authority
✓	Allow the State to make managed care directed payments based on the parameters set forth in 42 CFR 438.6(c) in advance of CMS approval.

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: Lori Coyner

Telephone Number: 503.509.5328

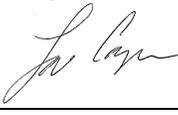
E-mail Address: Lori.A.Coyner@dhsosha.state.or.us

State Lead Contact for Demonstration Application: Chelsea Guest

Telephone Number: 503.383.6260

E-mail Address: Chelsea.A.Guest@dhsosha.state.or.us

Authorizing Official (Typed): Lori Coyner

Authorizing Official (Signature): 

Date: April 17, 2020

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.

Additional Specifications for COVID-19 Disaster Relief Fund

Oregon is requesting expenditure authority to establish a COVID-19 Disaster Relief Fund (the “Fund”) that can be used to sustain providers through the pandemic and mitigate the impact of the virus. The Fund would have two different permissible uses, as outlined in the 1115 waiver template and described in more detail below. The State shares CMS’s interest in ensuring that dollars from the Fund are deployed efficiently and responsibly, and that recipients do not divert dollars to non-COVID-19 uses. This attachment includes additional details related to how the State would distribute dollars from the Fund and how it would monitor appropriate use.

The guardrails below apply to all expenditures:

- **Medicaid pays only for its share.** As a general matter, all expenditures would be subject to appropriate cost allocation to Medicaid, taking into account projected increases in the Medicaid population. Medicaid has an important role in sustaining providers and supporting communities throughout this crisis, but these funds are to be used to protect Medicaid beneficiaries and providers that serve significant numbers of Medicaid beneficiaries.
- **Medicaid is the payer of last resort.** Providers would be required to rely on financial support from other federal sources to the extent available. Congress is moving quickly to address the pandemic; as Congress creates new funding streams that overlap with some of the intended uses of the Fund, the State would require providers and communities to first exhaust what other funds are available.
- **Expenditures must be consistent with economy, efficiency, and access to care.** Like all Medicaid payments, payments from the Fund would be consistent with economy, efficiency, and access to care. The State would achieve this by capping funding at cost and, for some uses, require pre-approval of budgets or limit expenditures used to sustain providers to no more than historical levels.
- **All records would be subject to audit.** The State will require that any entity receiving payments from the Fund maintain accurate records, subject to State and federal access. The State will conduct random audits to ensure appropriate use.

Additional details on how the State would make payments for each of the two different uses of the Fund are described below:

- **Assist providers in making necessary investments to adapt healthcare delivery to reflect the realities of COVID-19**
 - The State would create a list of approved COVID-19-related items for purchase that could be eligible for partial reimbursement from the Fund. Approved items would include telemedicine software and hardware, personal protective equipment, respirators, and ventilators. All expenditures above a certain dollar threshold would require prior approval.

- For other investments, like to reconfigure non-clinical space, convert units to ICUs, establish alternative screening sites, or create quarantine/sub-acute care spaces, providers would need approval prior to payment.
 - Expenses would be cost allocated to Medicaid based on the providers Medicaid share, in terms of patient days or encounters, as appropriate.
 - Providers would first be required to apply for funding from the Department of Health and Human Services and FEMA.
 - When the emergency concludes, providers would be required to disclose applications for CARES Act and other federal funding, report expenditures from 1115 funding, and refund any 1115 funding duplicated by the CARES ACT or other federal funding.
- **Support vulnerable providers as necessary to preserve access to care in light of dramatic shifts in utilization**
 - The State would target dollars to vulnerable high Medicaid and rural providers based on size, cash reserves, and eligibility for other special payments. Eligible providers would include pediatricians, behavioral health, rural and safety-net hospitals, dentists, home and community-based care agencies, residential facilities, and tribal health facilities.
 - At the provider level, aggregate payments to maintain access—meaning claims payments plus any additional payments from the Fund—to providers for the year would be capped at the prior year’s Medicaid payments, increased for any projected trend reflected in the State’s actuarial certification accompanying 2020 rates, and adjusted for increases to enrollment during 2020.