

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

February 29, 2024

Amir Bassiri, State Medicaid Director
New York State Department of Health
Office of Health Insurance Programs
Empire State Plaza
Corning Tower, Room 1466
Albany, NY 12237

RE: Approval of New York State (NYS) Department of Health (DOH) Children's Waiver
Amendment, NY.4125.R06.02 and 1915(b)(4) waiver, NY.0015.R00.00

Dear State Medicaid Director Bassiri:

The Centers for Medicare & Medicaid Services (CMS) is approving the state's request to amend the NYS DOH 1915(c) Children's Waiver. This Home and Community-Based Services (HCBS) waiver, which provides services to children and adolescents who meet nursing facility, hospital and Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IDD) levels of care, has been assigned CMS control number NY.4125.R06.02. This control number should be referenced on all future correspondences relating to this waiver amendment.

With this amendment, the state adds Financial Management Services (FMS) as a new waiver service to assist participants with purchasing the following existing waiver services: Adaptive and Assistive Technology (AAT), Environmental Modifications (E-Mods) and Vehicle Modifications (V-Mods). The amendment delineates that FMS will be provided via the Fee-For-Service (FFS) delivery system through a newly incorporated Self-Direction component, which will utilize the FMS as the provider of record. The FMS will be operated under an approved initial/concurrent 1915(b)(4) waiver. The action also confirms that the state and the FMS will train Health Home (HH) care managers and the Children and Youth Evaluation Service (C-YES) independent evaluators to educate children and their families receiving AAT/E-Mods/V-Mods on how to utilize the FMS to purchase these services. The effective date of the amendment is March 1, 2024.

CMS reminds the state that the state must have an approved spending plan in order to use the money realized from section 9817 of the ARPA. Approval of this action does not constitute approval of the state's spending plan.

The 1915(c) waiver continues to be cost-neutral. The average per capita cost of waiver service estimates (Appendix J.1) have been approved. The approvals are subject to the state's agreement to serve no more individuals than the total number of unduplicated participants indicated in Appendix J.2 of the waiver. If the state wishes to serve more individuals or make any other alterations to the waiver, an amendment must be submitted for approval.

Concurrently, CMS is approving New York's request for an initial section 1915(b)(4) FFS Selective Contracting Waiver under CMS control number NY.0015.R00.00, titled Children's Waiver FMS Selective Contracting. This waiver allows the state to selectively contract and limit the number of FMS providers. This waiver is authorized under section(s) 1915(b)(1) and 1915(b)(4) of the Social Security Act (the Act) and provides a waiver of section 1902(a)(23) (Freedom of Choice) of Title XIX.

Our decision is based on the evidence submitted to CMS demonstrating that the state's proposal is consistent with the purposes of the Medicaid program, will meet all of the statutory and regulatory requirements for assuring beneficiaries' access to and quality of services, and will be a cost-effective means of providing services to enrollees under this waiver.

This section 1915(b) waiver is approved for a five-year period effective March 1, 2024, through February 28, 2029. The state may request renewal of this authority by providing evidence and documentation of satisfactory performance and oversight. New York's request for renewal should be submitted to CMS no later than November 30, 2028.

The state must arrange for an independent evaluation or assessment of their 1915(b) waiver program and submit the findings when renewing the section 1915(b) waiver program. The IA should be submitted with the waiver renewal request ninety (90) days before the expiration of the approved waiver program, November 30, 2028.

It is important to note that CMS' approval of the 1915(c) waiver amendment and the 1915(b) authority solely addresses the state's compliance with the applicable Medicaid authorities. CMS' approval does not address the state's independent and separate obligations under federal laws including, but not limited to, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or the Supreme Court's Olmstead decision. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the Olmstead decision is available at http://www.ada.gov/olmstead/q&a_olmstead.htm.

Thank you for the cooperation and effort provided by you and your staff during the review of the waiver actions. If you have any questions concerning the 1915(c) waiver program, please contact Christopher Semidey at (212) 616-2328 or via email at Christopher.Semidey@cms.hhs.gov. If you have any questions regarding the 1915(b) waiver program you may contact Michael Cleary in the Division of Managed Care Operations (DMCO), at (215) 861-4282 or at Michael.Cleary@cms.hhs.gov.

- Sincerely,
George P. Failla Jr -S
George P. Failla, Jr., Director
Division of HCBS Operations and Oversight
John F. Giles Jr -S
John Giles, Group Director
Managed Care Group

Cc:

Christopher Semidey, CMS

Ciera Lucas, CMS

Cynthia Nanes, CMS

Wendy Hill Petras, CMS

Michael Cleary, CMS

Sabrina Tillman-Boyd, CMS

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Application for

Section 1915(b) (4) Waiver

Fee-for-Service

Selective Contracting Program

June, 2012

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Application for Section 1915(b) (4) Waiver Fee-for-Service (FFS) Selective Contracting Program

Facesheet

The **State** of _____ requests a waiver/amendment under the authority of section 1915(b) of the Act. The Medicaid agency will directly operate the waiver.

The **name of the waiver program** is _____.
(List each program name if the waiver authorizes more than one program.).

Type of request. This is:

_____ an initial request for new waiver. All sections are filled.

☐ a request to amend an existing waiver, which modifies Section/Part _____

☐ a renewal request

Section A is:

☐ replaced in full

☐ carried over with no changes

☐ changes noted in **BOLD**.

Section B is:

☐ replaced in full

☐ changes noted in **BOLD**.

Effective Dates: This waiver/renewal/amendment is requested for a period of dd years beginning _____ and ending _____.

State Contact: The State contact person for this waiver is _____ and can be reached by telephone at (____) _____, or fax at (____) _____, or e-mail at _____. (List for each program)

Section A – Waiver Program Description

Part I: Program Overview

Tribal Consultation:

Describe the efforts the State has made to ensure that Federally-recognized tribes in the State are aware of and have had the opportunity to comment on this waiver proposal (if additional space is needed, please supplement your answer with a Word attachment).

Program Description:

Provide a brief description of the proposed selective contracting program or, if this is a request to amend an existing selective contracting waiver, the history of and changes requested to the existing program. Please include the estimated number of enrollees served throughout the waiver (if additional space is needed, please supplement your answer with a Word attachment).

Waiver Services:

Please list all existing State Plan services the State will provide through this selective contracting waiver (if additional space is needed, please supplement your answer with a Word attachment).

A. Statutory Authority

1. **Waiver Authority.** The State is seeking authority under the following subsection of 1915(b):

☐ **1915(b) (4) - FFS Selective Contracting program**

2. **Sections Waived.** The State requests a waiver of these sections of 1902 of the Social Security Act:

- a. ☐ **Section 1902(a) (1) - Statewideness**
- b. ☐ **Section 1902(a) (10) (B) - Comparability of Services**
- c. ☐ **Section 1902(a) (23) - Freedom of Choice**
- d. ☐ **Other Sections of 1902 – (please specify)**

B. Delivery Systems

1. **Reimbursement.** Payment for the selective contracting program is:

- ☐ the same as stipulated in the State Plan
☐ is different than stipulated in the State Plan (please describe)

2. **Procurement.** The State will select the contractor in the following manner:

- ☐ **Competitive** procurement
☐ **Open** cooperative procurement
☐ **Sole source** procurement
☐ **Other** (please describe)

C. Restriction of Freedom of Choice

1. **Provider Limitations.**

- ☐ Beneficiaries will be limited to a single provider in their service area.
☐ Beneficiaries will be given a choice of providers in their service area.

(NOTE: Please indicate the area(s) of the State where the waiver program will be implemented)

2. **State Standards.**

Detail any difference between the state standards that will be applied under this waiver and those detailed in the State Plan coverage or reimbursement documents (if additional space is needed, please supplement your answer with a Word attachment).

D. Populations Affected by Waiver

(May be modified as needed to fit the State's specific circumstances)

1. **Included Populations.** The following populations are included in the waiver:

- ☐ Section 1931 Children and Related Populations
- ☐ Section 1931 Adults and Related Populations
- ☐ Blind/Disabled Adults and Related Populations
- ☐ Blind/Disabled Children and Related Populations
- ☐ Aged and Related Populations
- ☐ Foster Care Children
- ☐ Title XXI CHIP Children

2. **Excluded Populations.** Indicate if any of the following populations are excluded from participating in the waiver:

- ☐ Dual Eligibles
- ☐ Poverty Level Pregnant Women
- ☐ Individuals with other insurance
- ☐ Individuals residing in a nursing facility or ICF/MR
- ☐ Individuals enrolled in a managed care program
- ☐ Individuals participating in a HCBS Waiver program
- ☐ American Indians/Alaskan Natives

- ☐ Special Needs Children (State Defined). Please provide this definition.
- ☐ Individuals receiving retroactive eligibility
- ☐ Other (Please define):

Part II: Access, Provider Capacity and Utilization Standards

A. Timely Access Standards

Describe the standard that the State will adopt (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State has adopted) defining timely Medicaid beneficiary access to the contracted services, *i.e.*, what constitutes timely access to the service?

1. How does the State measure (or propose to measure) the timeliness of Medicaid beneficiary access to the services covered under the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment)?

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2. Describe the remedies the State has or will put in place in the event that Medicaid beneficiaries are unable to access the contracted service in a timely fashion (if additional space is needed, please supplement your answer with a Word attachment).

B. Provider Capacity Standards

Describe how the State will ensure (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State has ensured) that its selective contracting program provides a sufficient supply of contracted providers to meet Medicaid beneficiaries' needs.

1. Provide a detailed capacity analysis of the number of providers (e.g., by type, or number of beds for facility-based programs), or vehicles (by type, per contractor for non-emergency transportation programs), needed per location or region to assure sufficient capacity under the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment).

2. Describe how the State will evaluate and ensure on an ongoing basis that providers are appropriately distributed throughout the geographic regions covered by the selective contracting program so that Medicaid beneficiaries have sufficient and timely access throughout the regions affected by the program (if additional space is needed, please supplement your answer with a Word attachment).

B. Utilization Standards

Describe the State's utilization standards specific to the selective contracting program.

1. How will the State (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State) regularly monitor(s) the selective contracting program to determine appropriate Medicaid beneficiary utilization, as defined by the utilization standard described above (if additional space is needed, please supplement your answer with a Word attachment)?

2. Describe the remedies the State has or will put in place in the event that Medicaid beneficiary utilization falls below the utilization standards described above (if additional space is needed, please supplement your answer with a Word attachment).

Part III: Quality

A. Quality Standards and Contract Monitoring

1. Describe the State's quality measurement standards specific to the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment).
 - a. Describe how the State will (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State):
 - i. Regularly monitor(s) the contracted providers to determine compliance with the State's quality standards for the selective contracting program.
 - ii. Take(s) corrective action if there is a failure to comply.

2. Describe the State's contract monitoring process specific to the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment).
 - a. Describe how the State will (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State):
 - i. Regularly monitor(s) the contracted providers to determine compliance with the contractual requirements of the selective contracting program.
 - ii. Take(s) corrective action if there is a failure to comply.

B. Coordination and Continuity of Care Standards

Describe how the State assures that coordination and continuity of care is not negatively impacted by the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment).

Part IV: Program Operations

A. Beneficiary Information

Describe how beneficiaries will get information about the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment).

B. Individuals with Special Needs.

- ☐ The State has special processes in place for persons with special needs (Please provide detail).

Section B – Waiver Cost-Effectiveness & Efficiency

Efficient and economic provision of covered care and services:

1. Provide a description of the State's efficient and economic provision of covered care and services (if additional space is needed, please supplement your answer with a Word attachment).

2. Project the waiver expenditures for the upcoming waiver period.

Year 1 from: __/__/____ to __/__/____

Trend rate from current expenditures (or historical figures): 0.00% %

Projected pre-waiver cost _____

Projected Waiver cost _____

Difference: _____

Year 2 from: __/__/____ to __/__/____

Trend rate from current expenditures (or historical figures): 0.00% %

Projected pre-waiver cost _____

Projected Waiver cost _____

Difference: _____

Year 3 (if applicable) from: __/__/____ to __/__/____

(For renewals, use trend rate from previous year and claims data from the CMS-64)

Projected pre-waiver cost _____

Projected Waiver cost _____

Difference: _____

Year 4 (if applicable) from: __/__/____ to __/__/____

(For renewals, use trend rate from previous year and claims data from the CMS-64)

Projected pre-waiver cost _____

Projected Waiver cost _____

Difference: _____

Year 5 (if applicable) from: __/__/____ to __/__/____

(For renewals, use trend rate from previous year and claims data from the CMS-64)

Projected pre-waiver cost _____

Projected Waiver cost _____

Difference: _____