

Medicaid and CHIP Operations Group

December 12, 2024

Cheryl J. Roberts, Medicaid Director
Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, VA 23219

RE: Community Living Waiver (0372) amendment

Dear Director Roberts:

The Centers for Medicare & Medicaid Services (CMS) has completed our review of the proposed waiver action submitted for waiver number 0372.R05.02. This waiver action has a proposed effective date of January 1, 2025 and was submitted to amend this wavier.

Before we can continue processing this waiver action, we need additional or clarifying information.

The State is seeking to make changes to the provision of care for Legally Responsible Individuals (LRIs), including the ability for a LRI to contract with another LRI for the delivery of some services. While this change to the program is permissible, during the process of review of the current Amendment action, it has been brought to CMS' awareness that the State no longer has a method to determine whether or not the care provided by the LRI is considered extraordinary and has contacted CMS for technical assistance on this matter.

Background:

1915(c)(2)(A): The state must ensure there are "necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services." LRIs may not be paid for supports that they are ordinarily obligated to provide. Through an HCBS waiver, a state may elect to make payment for personal care or similar services that are rendered by LRIs when such services are **deemed extraordinary** care so long as the state specifies satisfactory criteria for authorizing such payments. The criteria must include how the state will distinguish extraordinary from ordinary care. By extraordinary, CMS means care exceeding the range of activities that a legally responsible individual would ordinarily perform in the household on behalf of a person without a disability or chronic illness of the same age, and which are necessary to assure the health and welfare of the participant and avoid institutionalization. The State no longer specifies satisfactory criteria.

CMS is utilizing the process of this Request for Additional Information (RAI) to answer, through a collaborative process of technical assistance, the following questions:

1. What information does the State collect, and through which process, to ensure that the services provided by an LRI are deemed extraordinary in nature?
2. When the LRI has decision-making authority over the selection of providers of waiver services, please clarify the State's processes for ensuring that a legally responsible individual uses substituted judgement on behalf of the individual.

We are providing this information under provisions of section 1915(f) of the Social Security Act (added by PL 97-35). This has the effect of stopping the 90-day clock for CMS to take action on the material, which would have expired on December 19, 2024. A new 90-day clock will not begin until we receive your response to this request.

In accordance with our guidelines in the August 16, 2018 Center for Medicaid and CHIP Services Informational Bulletin, if a response to a formal request for additional information from CMS is not received from the state within 90 days of issuance, CMS may initiate disapproval of the waiver action. Due to the unique nature of a 1915(c) renewal, active work and dialogue between the state and CMS may mitigate such action.

If you have any questions concerning this information, please contact me at (410) 786-7561. You may also contact Alice Robinson Ross at Alice.RobinsonRoss@cms.hhs.gov or (215) 861-4261.

Sincerely,

George P. Failla, Jr., Director
Division of HCBS Operations and Oversight

cc: Nicole Martin, VA
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