Idaho Department of Health and Welfare

Section 1115 Medicaid Demonstration Amendment Request:

Removal of Expenditure Authority For
Use of Legally Responsible Individuals
to Render Personal Care Services (PCS)

December 6, 2024

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Section I. Background and Overview

A. Background

During the COVID-19 public health emergency, the federal Centers for Medicare and Medicaid Services (CMS) allowed a temporary flexibility to decrease the need for direct care workers in people's homes to prevent the spread of COVID-19 and to address the shortage of direct care workers.

Specifically, CMS allowed Family Personal Care Services (FPCS), the paid employment of legally responsible parents and spouses by direct care staffing agencies while providing care in their own homes for their loved ones who are Medicaid participants with disabilities. Prior to this temporary change, legally responsible individuals were expressly prohibited by both federal law and state administrative rule from being paid personal care aides.

With the end of the federally declared public health emergency in 2023, the State Medicaid Agency faced the decision whether to terminate or continue this policy flexibility. The continuing direct care workforce shortage and concern expressed by stakeholders led the State Medicaid Agency to request and secure CMS approval to extend this flexibility through March 21, 2025, with limited safeguards given current staff capacity to oversee the program. The State Medicaid Agency had extensive technical assistance with CMS during this time. In early 2024 the Department started a stakeholder workgroup to discuss future changes to the benefit with the intent to possibly amend requirements with the March 2025 renewal.

Stakeholders are aware that FPCS's current authority will end in March 2025, unless the State Medicaid Agency is authorized and funded to continue it in some form. To date, the stakeholder group has asked the State Medicaid Agency to further loosen the program's few restrictions.

Stakeholders requested less frequent in-home health and safety visits and an expanded scope of responsibilities for parents to take on and be paid for beyond what is currently authorized. To date, the State Medicaid Agency has responded that the program is under review and those recommendations will be taken into consideration.

The State Medicaid agency is not currently resourced to continue to support this program and ensure operational integrity, given its exponential growth and number of concerning trends identified of fraud, waste, and abuse.

B. Overview

The current structure of this expenditure authority has led to unanticipated and unsustainable growth in the program that cannot be appropriately managed and overseen within the State Medicaid Agency's current resources. Further, the State Medicaid Agency has identified a concerning volume of incidents of suspected and

confirmed fraud and abuse that the State Medicaid Agency cannot resolve within the program's current parameters and staff capacity.

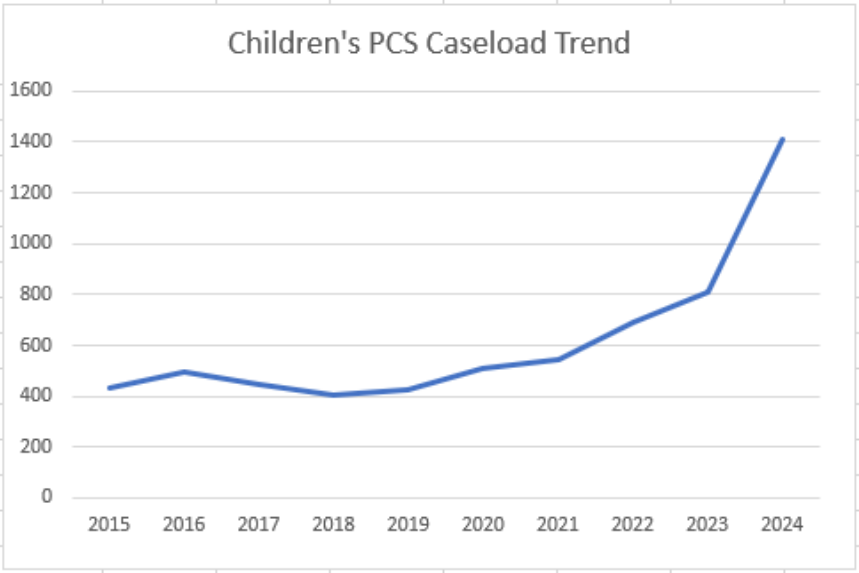
In the role as stewards of taxpayer dollars and oversight of this program serving vulnerable children and adults, the State Medicaid Agency has determined the most appropriate action is to move to terminate this expenditure authority allowing Legally Responsible Individuals to be reimbursed as PCS providers effective January 30, 2024. This action will not remove Personal Care Services as a State Plan Benefit, which will remain available as it has prior to COVID-19 and staffed by direct care professionals through provider agencies.

Program advocates and participants can work with the state legislature to determine which safeguards are appropriate to resolve these issues, recognizing the need for additional staff capacity for appropriate oversight and timely processing of any documentation. The State Medicaid Agency stands ready to support state policy makers with any information needed as part of these conversations.

Historically across successive fiscal years dating as far back as 2015, there were roughly five hundred (500) participants in children's personal care and private duty nursing services. Enrollment jumped to five hundred forty-six (546) in 2021, and significantly increased in each subsequent year. In October 2024, the State Medicaid Agency had one thousand one hundred seventy-eight (1,178) participants in the program, and projected enrollment at one thousand four hundred thirteen (1,413) by the end of calendar year 2024.

This represents a fifty-seven percent (57%) increase in enrollment since 2023 when the public health emergency ended. The growth in enrollment at this rate was not projected and is not sustainable within the State Medicaid Agency's budget if this continues. While expenditures are based on authorized hours of services that are approved by clinical staff, the State Medicaid Agency is aware of many inappropriate attempts to increase the number of authorized hours by families which are further described below.

Year	Children's PCS Caseload Trend
2015	434
2016	493
2017	446
2018	402
2019	426
2020	507
2021	546
2022	688
2023	809
2024	1413
	*1,178 as of 10/29/24



This ongoing enrollment surge is due in part to suspected program abuse. The State Medicaid Agency has observed that some parents, spouses, and provider agencies are trading tips on how to seemingly exploit this program. This includes:

- Sharing information on how to manipulate and respond to the medical assessment to maximize authorized hours of service.
- Photocopying and sharing eligibility paperwork rather than obtaining independent confirmation from two (2) direct care staffing agencies that they have insufficient staff to serve the child/spouse (as required by the program).
- Recruiting families outside Idaho to move to Idaho to be paid for these services.
- Advertising to employ parents to care for their child(ren) with special needs, saying there is, "No need to work away from home." This incentivizes parents who never previously had a need or interest in these services to apply.
- Communicating the starting pay rates for area provider agencies, resulting in participants switching agencies *not* due to a quality-of-care concern, but exclusively to maximize the household's income.

Other suspected fraudulent and concerning activities include:

- Claiming to care for children but performing other activities at the same time (i.e., driving for a ride share company).
- Inappropriately double- and triple-billing by caring and billing for multiple children simultaneously (the program only allows a provider to care for one (1) individual at a time). This also presents serious questions of quality and adequacy of care when the child has been identified to need a specific number of hours of care, but it is physically impossible for the parent to serve

multiple children for those hours. This includes parents logging more than twenty-four (24) hours in a day as confirmed by electronic visit verification (EVV).

- Using Medicaid as supplemental household income by determining the needs of the child(ren) on the income received. To quote one parent, "I want PCS for four of my kids. When I find out what my income will be, I might get PCS for [the others]."
- Repeatedly calling State Medicaid Agency staff to inquire about the status of assessments and actively encouraging others to do the same, taking time away from employees completing those assessments and work for the other Medicaid participants.
- Households that have had continuous Medicaid coverage in the past, but never requested or identified a need for a child (or children) in the household to receive PCS until this flexibility was implemented, with no discernible change in the child's condition that would warrant said request.
- Instances in which one individual is clocking in and out of services for multiple participants in multiple households that appear to be efforts to avoid detection by quality assurance monitoring of EVV data. In the last calendar quarter, one individual clocked in and out with overlapping visit segments (which is prohibited) for twenty-one (21) FPCS participants.
- Households selectively providing service hours to attempt to control income that would affect eligibility for other public benefits, which suggests that the child did not medically require the total number of hours authorized.

The State Medicaid Agency can supply copies of evidence and support of all of these instances and others upon request.

Not only has enrollment increased, but costs have also nearly quadrupled since 2022 and are not sustainable within the current appropriation if the growth continues.

As stewards of public funds and in the role of oversight of this entitlement program serving vulnerable children and adults, the State Medicaid Agency cannot continue to operate a program with such high rates of suspected and known fraud and abuse and potential health and safety issues for participants.

Many of these cases have come to the State Medicaid Agency's attention through complaints or observed and experienced interactions with families, content posted on social media, referrals from other state agencies that serve the same population, and referrals by word of mouth from community partners and individuals. While several of these cases have been referred to the Medicaid Program Integrity Unit, the State Medicaid Agency does not have the infrastructure to administratively identify all cases needing additional inquiry and pursuing recovery. Moreover, if a household / family is perpetrating fraud, any recovery of funds would be from the agency that

technically employs the parent / spouse, thereby weakening Idaho's already tenuous network of direct care agencies

The State Medicaid Agency recognizes that there are still many families who use this benefit and program appropriately, legitimately need support, and cannot find direct care workers to provide services to their children. The State Medicaid Agency has actively engaged in marketing and outreach activities to bolster the direct care workforce in Idaho over the last two (2) years and has observed an approximately ten percent (10%) growth in the number of unduplicated direct care workers, not including parents and spouses, as identified in the state's Electronic Visit Verification data. The State Medicaid Agency will share options through external communications to agencies and families during this transition. State Medicaid Agency staff are always available to families and provider agencies to discuss options.

At the same time, it is evident over the last year alone of operationalizing this flexibility that the State Medicaid Agency does not currently have the resources to build an infrastructure to determine what is acceptable and then meaningfully monitor and enforce those standards to promote healthy and safety and appropriate use of public funds.

The State Medicaid Agency team responsible for administration and oversight of the FPCS program will be implementing additional safeguards and operational processes to provide as much oversight as possible during the remaining months of the FPCS flexibility. These activities will include:

- Processing timeframes for new requests will be moved to thirty (30) days. The current timeframe is fourteen (14) days. The team is unable to maintain fourteen (14) days without detrimental impact to other programs and services administered by these staff.
- Quarterly supervisory oversight forms submitted by provider agencies will require a narrative to validate that each visit did, in fact, occur and is reflective of adequate clinical oversight.
- Functional assessments for whom the primary respondent is also the direct care worker (including parents and spouses) will be subject to post-processing internal review by the Medical Director to validate that PCS are medically necessary. Additional medical documentation to substantiate the participant’s ongoing need for services may be requested.

In addition, the Medicaid Program Integrity Unit is actively pursuing recoupments and assessing penalties as appropriate and will refer all credible allegations of fraud to the Medicaid Fraud and Control Unit.

Section II: Description of the Amendment

Effective January 31, 2025, the State Medicaid Agency is requesting an amendment to the 1115 Research and Demonstration Waiver, Project Number 11-W-00339/10, to remove an approved expenditure authority.

This requested amendment does not remove Personal Care Services as an available benefit for those served by Idaho Medicaid, which will continue to be available as a State Plan benefit. Rather, the State Agency seeks to amend who can qualify as a provider and can render the service for Medicaid payment. The State Agency will revert back to the same criteria and qualifying providers as existed pre-COVID-19. With concerted efforts and rate increases to bolster the direct care workforce, PCS provider agencies have reported a ten percent (10%) increase in the number of staff hired and who will be available to serve participants receiving PCS services. Please note, the State Agency continues to work on several concerted efforts to support the direct care workforce beyond what has been done to date.

The state request that the language below be removed from Idaho's 1115 demonstration waiver authority.

> *2. Use of Legally Responsible Individuals (LRI) to Render Personal Care Services (PCS). The state will provide payment for PCS rendered by an LRI, which could be inclusive of legally responsible family caregivers, for beneficiaries eligible to receive 1905(a) personal care services through the Idaho Medicaid state plan providing that the state meets all existing requirements as described under the Medicaid state plan, including Electronic Visit Verification requirements. The requested LRI must meet all qualifications to become a direct care worker to provide PCS as authorized in the Medicaid state plan, including abiding by all oversight requirements from the hiring agency and the Idaho Department of Health and Welfare. A beneficiary can receive PCS from a non-LRI beyond the hours provided by an LRI in accordance with a beneficiary's assessed need and the plan of care. The state shall implement a phased-in approach, which will be detailed in the monitoring reports and must be submitted to CMS at least sixty (60) days in advance of implementation, for the following conditions that must be met for a beneficiary to receive PCS from an LRI:*
> *a. Extraordinary Circumstance. A beneficiary must demonstrate their care needs meet an extraordinary circumstance to allow for an LRI to provide PCS. An extraordinary circumstance is defined as no other caregiver being available to meet all of the beneficiary's allocated hours.*
> *b. Application Requirement. The beneficiary must have attempted to arrange for a non-LRI direct care worker to provide needed PCS. The beneficiary must demonstrate a minimum of two unsuccessful attempts to obtain PCS from providers that are not an LRI.*

A. Proposed Cost Sharing Requirements under the Demonstration as Amended:

This amendment would not change cost sharing requirements. Prior to and after this amendment, there are no premium, enrollment fee, or similar charge, or cost-sharing (including copayments and deductibles) required of individuals enrolled in this demonstration that varies from the state's current Medicaid State Plan.

B. Proposed Changes to the Delivery System under the Demonstration as Amended:

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 and approved Medicaid State Plan and waivers.

C. Proposed Changes to Benefit Coverage under the Demonstration as Amended:

The benefit coverage will be the same manner as under the state's current and approved Medicaid State Plan. Specifically, the coverage criteria and requirements for Personal Care Service (PCS) will continue as they are in state's approved State Plan Alternative Benefit Plan (ABP).

D. Proposed Changes to Eligibility Requirements as Amended:

This amendment would not change eligibility requirements. All eligibility requirements will continue to be met through an initial and annual application, review process, and ongoing oversight.

Section III: Expenditure Authority

The state is requesting remove the following approved expenditure authority from the demonstration.

2. Use of Legally Responsible Individuals to Render Personal Care Services (PCS). *Expenditures for the state to provide payment for personal care services rendered by legally responsible individuals (which could be inclusive of legally responsible family caregivers), following a reasonable assessment by the state that the caregiver is capable of rendering the services, for beneficiaries eligible to receive 1905(a) personal care services through the Idaho Medicaid state plan providing that the state meets all existing requirements as described under the Medicaid state plan, including Electronic Visit Verification requirements.*

Section IV: Expected Impact on Budget Neutrality

A. Expenditure Projection:

The state projects that the total aggregate expenditures under this 1115 Research and Demonstration Waiver demonstration amendment will decrease.

- Services are not being added or deleted to the state Medicaid Program.
- Cost sharing is not changing.
- A provider qualification flexibility is being removed.

Failing to execute the requested amendment will have a material negative impact on the state's budget neutrality model for demonstration number 11-W-00339/10.

B. Enrollment Impact:

This amendment should not have an impact on the eligibility or enrollment of Medicaid beneficiaries.

Section V: Evaluation Design

Idaho's 1115 Waiver Evaluation design will not include the removed expenditure authority.

Section VI: Public Notice Process and Input Summary

Pursuant to the terms and conditions that govern Idaho's Demonstration, Idaho must provide documentation of its compliance with the state notice procedures set forth in 59 Fed. Reg. 49249 (September 27, 1994). The state must also comply with tribal and Indian Health Program/Urban Indian Organization consultation requirements at section 1902(a)(73) of the Act as amended by Section 5006(e) American Recovery and Reinvestment Act of 2009, 42 CFR 431.408(b), State Medicaid Director Letter #01-024, or as contained in the state's approved Medicaid State Plan.

Tribal solicitation and public notice were completed by publishing notice and the draft amendment at https://townhall.idaho.gov/. This is an established and well-publicized meeting and information site, created by the Idaho Governor to increase transparency and public involvement.

Tribal solicitation was also completed by sending a Dear Tribal Leader Letter to Tribal representatives.

A summary of all comments received and state responses have been included in this application in Appendix A.

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Idaho Department of Health and Welfare

APPENDIX A

Public Comments and Responses

APPENDIX A: PUBLIC COMMENT SUMMARY

An estimated _____ people commented during Idaho's public comment period for this amendment. The following is a summary of those comments:

1115 Demonstration Amendment Comment and Response Document	
Comments/Questions	**Responses**
One commenter noted	

Idaho Department of Health and Welfare

APPENDIX B

Demonstration Amendment Public Notice