

Hi Shasta, thank you again for your inquiry. Here is our response.

On background, attributable to Centers for Medicare & Medicaid Services (CMS):

Thank you for your inquiry regarding a COVID flexibility that allows payment to parent-caregivers of children receiving Home and Community Based Services' in-home caregiver hours. Following are some links and responses to your questions that may be helpful for your reporting.

- Does Section 1915 (k) allow payment to parent-caregivers? If not, what is the language that excludes them? Medicaid self-direction authorities allow legally responsible family members to be paid providers. Under 1915(k) of the Social Security Act (the Act), family members can be paid providers as long as they do not act as the beneficiary's representative for 1915(k) related activities such as the person-centered planning process.

- Does Section 1915 (c) allow payment to parent-caregivers? If not, what is the language that excludes them? For both 1915(c) and 1915(i) HCBS authorities, a state may allow *legally responsible relatives* (including parents) to be paid to provide HCBS services in extraordinary circumstances such as when another provider is unavailable. Each state defines the extraordinary circumstances in which legally responsible individuals may become paid workers. This provision is usually used with individuals who require a provider with particular skills, such as behavioral interventions. It is also used in rural areas that have provider shortages or during emergencies such as the COVID-19 pandemic or a natural disaster. Even in extraordinary circumstances, for children, the parent or legally responsible relative may be paid to provide only those services in addition to what a child of the same age without a disability requires and which are necessary to assure the health and welfare of the child.

- Does Section 1915 (j) allow payment to parent-caregivers? If not, what is the language that excludes them? Medicaid self-direction authorities allow legally responsible family members to be paid providers. The rules around when this can happen vary among the benefits. Under section 1915(j) of the Act, states can elect to allow legally responsible family members to provide personal attendant services.

- What is the difference between these three programs in how much is reimbursed to states? [For the difference between HCBS waivers, read more here:https://www.cms.gov/Outreach-and-Education/American-Indian-Alaska-Native/AIAN/LTSS-TA-Center/info/state-medicaid-policies](https://www.cms.gov/Outreach-and-Education/American-Indian-Alaska-Native/AIAN/LTSS-TA-Center/info/state-medicaid-policies). For each of the HCBS authorities you reference, states propose provider reimbursement methodologies to CMS, which are reviewed against the federal parameters for each program. The approved payment methodology is included in the approved state plan or waiver document and is available online at [Medicaid.gov](https://www.Medicaid.gov).

For the amount of matching federal funds that states receive, it is important to note that all Medicaid programs are jointly funded between the states and the federal government, where the federal government pays states for a specified percentage of program expenditures, commonly referred to as the [Federal Medical Assistance Percentage \(FMAP\)](#). The percentage of matching federal funds, FMAP, that each state receives is determined by the Office of The Assistant Secretary for Planning and

Evaluation of the Department of Health and Human Services. You can learn more about the FMAP here: <https://aspe.hhs.gov/federal-medical-assistance-percentages-or-federal-financial-participation-state-assistance-expenditures>.

- How many states allow parent-caregivers of minors to be paid through HCBS? I've heard Colorado, California, Arizona and possibly Idaho and Michigan? Is that true? Any others? We would recommend that you reach out to state Medicaid agencies with your question since that information is not readily available.

Many states have requested this flexibility due to the public health emergency and you can review all of the approved state requests on [Medicaid.gov](https://www.medicaid.gov) for 1915(c) Appendix K Emergency Preparedness and Response and COVID-19 Addendum and section 1135 waivers. The links that you can use are provided in the response to your next question.

- What is the mechanism that allowed temporary payment to parent-caregivers in states that applied during the PHE? Section 1135? What part? How many states applied? States can apply for this flexibility through a 1915(c) Appendix K Emergency Preparedness and Response and COVID-19 Addendum and a section 1135 waiver.

You can find more information about Appendix K requests and review the state approvals here: <https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/home-community-based-services-public-health-emergencies/emergency-preparedness-and-response-for-home-and-community-based-hcbs-1915c-waivers/index.html>.

For 1915(i) programs, states utilize section 1135 waiver authority. You can review the section 1135 approvals here: <https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/federal-disaster-resources/index.html>

- A letter granting the authority states: "This waiver will ensure that medically necessary services are furnished in the event the traditional provider workforce is diminished or there is inadequate capacity due to the public health emergency." [1] What if there continues to be a dire in-home caregiver and nurse shortage after the pandemic? Is there any way to continue the flexibility? For both 1915(c) and 1915(i) HCBS authorities, a state may allow *legally responsible relatives* (including parents) to be paid to provide HCBS services in extraordinary circumstances such as when another provider is unavailable. Each state defines the extraordinary circumstances in which legally responsible individuals may become paid workers. This provision is used in some states to address, for example, provider shortages in rural areas.

- Does anyone there know the history behind the practice of not allowing parents of minor disabled children to be paid? Where did that rule come from? What congressional discussions or bill was

passed to that effect or was this an administrative decision? We recommend reaching out to the Congressional Committees that have the legislative authority in this matter with your questions.

For additional background: With the exception of state plan personal care services authorized under section 1905 of the Social Security Act (the Act), which prohibits services from being provided by a *legally responsible family member*, and the circumstances detailed below for 1915(c) and 1915(i) HCBS authorities, there is no federal policy that would preclude a family member from providing services they are qualified to provide. For example, under the Medicaid home health benefit, there is no federal policy that would preclude a family member employed by a home health agency from providing nursing services to another family member if the conditions of 42 CFR 440.70 are met. The required nursing services under the home health benefit are those defined in the state's Nurse Practice Act and are covered on a part-time or intermittent basis. It is important to note, that while the federal definition of home health nursing services contains no general preclusion on services furnished by a family member, a state may have a reasonable provider standard that may include consideration for beneficiary/provider relationship.

Additionally, Medicaid self-direction authorities allow legally responsible family members to be paid providers. The rules around when this can happen vary among the benefits. Under section 1915(j) of the Act, states can elect to allow legally responsible family members to provide personal attendant services. Under 1915(k) of the Act, family members can be paid providers as long as they do not act as the beneficiary's representative for 1915(k) related activities such as the person-centered planning process.

For both 1915(c) and 1915(i) HCBS authorities, a state may allow *legally responsible relatives* (including parents) to be paid to provide HCBS services in extraordinary circumstances such as when another provider is unavailable. Each state defines the extraordinary circumstances in which legally responsible individuals may become paid workers. This provision is usually used with individuals who require a provider with particular skills, such as behavioral interventions. It is also used in rural areas that have provider shortages or during emergencies such as the COVID-19 pandemic or a natural disaster. Even in extraordinary circumstances, for children, the parent or legally responsible relative may be paid to provide only those services in addition to what a child of the same age without a disability requires and which are necessary to assure the health and welfare of the child.

For Medicaid 1915(c) HCBS waiver and 1915(i) HCBS state plan benefits, person-centered service planning is the process by which services and supports are established and made available to the Medicaid HCBS beneficiary. This process includes planning for both paid and unpaid supports (commonly referred to as "formal" and "informal" supports) and would include parent availability. When qualified providers outside of legally responsible relatives are available to implement services as identified in the person-centered service plan, extraordinary circumstances are generally not present. In these scenarios, legally responsible relatives would not be authorized as providers, but other family members could be, at state option.