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DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

April 3, 2020

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

**REQUEST FOR SECTION 1115 DEMONSTRATION AUTHORITY RELATED TO THE
COVID-19 PUBLIC HEALTH EMERGENCY**

Dear Ms. Judith Cash:

The Department of Health Care Services (DHCS) writes to request approval under Section 1115 of the Social Security Act for the flexibilities detailed in the enclosed template related to the ongoing COVID-19 public health emergency. This submission is made pursuant to State Medicaid Directors Letter no. 20-002 (“COVID-19 Public Health Emergency Section 1115(a) Opportunity for States”) and DHCS accordingly requests a March 1, 2020, effective date for the proposed expenditure authorities.

In developing this proposal, DHCS prioritized those flexibilities geared towards maintaining safe and sufficient beneficiary access to covered services in the current emergent circumstances, by maximizing capacity in hospitals and other appropriate health care settings. Relatedly, our proposal seeks to extend Medicaid reimbursement and/or flexibility for targeted providers, delivery systems, and care settings that are particularly affected by the ongoing emergency and essential to California’s response to COVID-19. The proposed authorities would apply within our preexisting Medi-Cal delivery systems and programs approved under the California State Plan and waivers thereof, including the Medi-Cal 2020 Section 1115 demonstration.

The specific requests included in the template are as follows:

1. Reimbursement for COVID-19 testing and treatment inside jails and prisons for Medi-Cal eligible inmates;

2. Waiver of the 16-bed limitation applicable to certain Institutions for Mental Disease in order to maximize bed capacity during the emergency;
3. Extend coverage of COVID-19 treatment to the optional uninsured category under Section 1902(a)(10)(A)(ii)(XXIII) at the 100 percent FMAP rate provided in HR 6201 (to coincide with California's forthcoming State Plan Amendment electing to cover this optional group);
4. Deem any COVID-19 testing and treatment provided to Medi-Cal beneficiaries in appropriate care settings outside of hospital emergency rooms as "emergency services" or services necessary to treat an "emergency medical condition;"
5. Reimbursement for temporary, emergency housing within Whole Person Care (WPC) pilots approved pursuant to the Medi-Cal 2020 Demonstration, and flexibility for WPC pilots to modify their budgets for the current Performance Year in response to COVID-19;
6. Waiver of certain utilization limits applicable to the residential treatment benefit provided in approved Drug Medi-Cal-Organized Delivery System (DMC-ODS) pilots under the Medi-Cal 2020 Demonstration;
7. Reimbursement for retainer payments in specified Home and Community-Based Services (HCBS) programs;
8. Waiver of the interim rate setting methodology for DMC-ODS pilots approved under the Medi-Cal 2020 Demonstration to provide temporary interim reimbursement at the lower of: actual certified county costs or DHCS-approved interim rates increased by 100 percent to remove barrier for interim reimbursement reflecting higher costs. Final reimbursement will be subject to existing final reconciliation processes;
9. Authority for DHCS and contracted managed care plans, as applicable, to make incentive payments on a pay-for-reporting basis for the January 1, 2020, to June 30, 2020, period within: (1) the Public Hospital Redesign and Incentives in Medi-Cal (PRIME) program under the Medi-Cal 2020 Demonstration; and (2) the Quality Incentive Pool (QIP) directed payment program approved pursuant to 42 C.F.R. §438.6(c).

Please note this immediate Section 1115 submission includes multiple items that DHCS previously requested approval under Section 1135. This is due to ongoing discussions with CMS regarding the appropriate avenues for requesting various federal flexibilities related to the COVID-19 emergency. As those discussions continue, DHCS requests the ability to amend this Section 1115 submission to request approval of additional

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flexibilities the state has sought or will seek pursuant to Section 1135 or as State Plan Amendments, in the event approval is not available under those authorities.

We appreciate and thank you for the continued partnership during these difficult times.

Sincerely,
(Original Signed By: _____)

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Chief Deputy Director
Health Care Programs
State Medicaid Director

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COVID-19 Section 1115(a) Demonstration Application Template

The State of California, Department of Health Care Services 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 California, 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
X	Current title XIX State plan beneficiaries (including proposed "uninsured" optional eligibility group at Section 1902(a)(10)(A)(ii)(XXIII) for purposes of the proposal at II.B.3)
X	Current section 1115(a)(2) expenditure population(s) eligible for/enrolled in the following existing section 1115 demonstrations: (1) Low Income Pregnant Women 109-138% FPL (2) Out of State Former Foster Care Youth (approved under California Medi-Cal 2020 Demonstration (no. 11-W-00193/9))

- 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
X	Current title XIX State plan benefits
X	<p data-bbox="477 344 1101 380">Others as described here: <i>[state to describe here]</i></p> <ol style="list-style-type: none"> <li data-bbox="477 417 1302 737">1. <u>Testing, diagnosis, and treatment for COVID-19 for Medi-Cal eligible inmates:</u> California proposes to cover expenditures on behalf of Medi-Cal eligible individuals who are inmates for services provided in public institutions (including jails and prisons). This would include testing, diagnosis and treatment of COVID-19, or other State plan covered services where medically appropriate to ensure care is provided in a safe way without transporting individuals to acute care facilities. <li data-bbox="477 779 1302 1472">2. <u>Institutions for Mental Disease Bed Capacity and ancillary services:</u> California proposes to cover certain expenditures on behalf of Medi-Cal beneficiaries under 65 years of age that are patients in Institutions for Mental Disease (IMD) during the COVID-19 emergency, notwithstanding the 16-bed limitation and prohibition on federal financial participation. This proposal is intended to facilitate a temporary increase in bed capacity for affected beneficiaries and to allow facilities that are IMDs (or that become IMDs by temporary increasing capacity above 16 beds) to claim for covered services provided to IMD residents during the emergency period. California also proposes this flexibility to extend to situations where a hospital repurposes psychiatric beds in response to COVID-19 and temporarily delivers IMD care in appropriate alternative settings (that may exceed 16 beds). Coverage would include the IMD stay and any other medically necessary, State plan covered services (ancillary services) provided to the IMD resident. <li data-bbox="477 1514 1302 1831">3. <u>COVID-19 treatment for Optional Uninsured Category:</u> California proposes to extend coverage to the optional uninsured category under Section 1902(a)(10)(A)(ii)(XXIII) for services to treat COVID-19, in addition to the covered COVID-19 testing for the uninsured category described in Section 1902(a)(10)(XVIII). California proposes COVID-19 treatment for the uninsured category is reimbursed at the same 100% FMAP rate applied with respect to COVID-19 testing for such group, as described in Section 1905(b).

Check to Apply	Services
	<p>Please note that California is concurrently seeking SPA approval to elect to cover the optional uninsured group.</p> <p>4. <u>COVID-19 testing and treatment for Restricted Scope Eligibility Categories:</u> California proposes to deem COVID-19 testing and treatment outside of an emergency room setting to constitute “emergency services” or services for an “emergency medical condition” for purposes of Medi-Cal beneficiaries eligible for only restricted scope coverage. This would extend the availability of federal financial participation for COVID-19 testing and treatment for restricted scope beneficiaries for purposes of Section 1903(v)(2)-(3). This would also allow Medi-Cal beneficiaries enrolled in a managed care plan to receive COVID-19 testing and treatment on an out-of-network basis and allow plan payment to affected providers pursuant to Section 1932(b)(2).</p> <p>5. <u>Emergency Temporary Housing in Whole Person Care (WPC) pilots and COVID-19 related changes:</u> California proposes to allow federal financial participation for investments for emergency, temporary housing related to the COVID-19 emergency made in WPC pilots approved under the current Medi-Cal 2020 demonstration.</p> <p>Proposed addition to Medi-Cal 2020 Special Terms and Conditions at Paragraph 118:</p> <p><i>(c) Emergency housing. For any demonstration year during which a national emergency related to COVID-19 has been declared, including any extensions, federal financial participation is available for investments in temporary housing as a result of the emergency, including but not limited to, commandeered hotels, other places of temporary residence, and other facilities that are suitable for use as places of temporary residence or medical facilities as necessary for quarantining, isolating or treating individuals who test positive for COVID-19 or who have had a high-risk exposure or have high risk factors such as age or underlying medical conditions. WPC Pilots may receive payments for the expansion of capacity of such facilities</i></p>

Check to Apply	Services
	<p><i>and related expenditures including but not limited to identification and triage of individuals to temporary housing sites, transportation and logistics to move individuals to temporary housing sites, on-site supports including sanitation, meals, and other supports essential to maintaining a habitable, safe, and stable environment that reduces risk of COVID-19 transmission.</i></p> <p>California also proposes to allow WPC pilots, subject to DHCS approval, to modify their program budgets during Performance Year 5 to reflect changes in circumstances related to the COVID-19 emergency. Modifications may include, but are not limited to, changes to previously approved program budgets to reflect changes in utilization and service patterns, modification of outcome-related incentive payments, and the addition of new programs, infrastructure, and strategies to address the emergency and build capacity to protect the target populations.</p> <p>6. <u>Drug Medi-Cal Organized Delivery Systems (DMC ODS) Residential Treatment:</u> California proposes to waive the following limits on residential treatment for participating DMC ODS pilots under the current Medi-Cal 2020 Special Terms and Conditions with respect to DMC ODS beneficiaries impacted by the COVID-19 emergency:</p> <ul style="list-style-type: none"> (a) Waiver of the limitation on 2 non-continuous 90-day regimens per year, and (b) Waiver of the current 30-day (for adolescents) and 90-day (for adults) maximums for a single residential stay.

C. Cost-sharing

Check to Apply	Cost-Sharing Description
X	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: <i>[state to insert description]</i>

D. Delivery System:

Check to Apply	Delivery System Description
X	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: <i>[state to insert description]</i>

III. EXPENDITURE AND ENROLLMENT PROJECTIONS

A. Enrollment and Enrollment Impact.

- i. State projects that approximately 28,000-70,000 individuals as described in section II will be eligible for 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 as follows:

1. **Testing, diagnosis, and treatment for COVID-19 for Medi-Cal eligible inmates:** \$2.5M (with \$1M being costs that would be incurred if transferred to hospital) to \$5M (with \$2M being costs that would be incurred if inmates were transferred to hospital) once fully realized.
2. **Institutions for Mental Disease Bed Capacity and ancillary services:** \$3.6M to \$12M monthly once reach full anticipated capacity.
3. **COVID-19 treatment for Optional Uninsured Category:** \$39-97M over the period of the emergency, assuming 1-2.5%, or 28,000-70,000, uninsured test positive for COVID-19 and of such individuals 20% seek treatment. Of the 20% that seek treatment, we anticipate 81% will have emergency room visit without admission, 14% admitted to non-ICU and 5% will be admitted to ICU level of care.

The following items are considered to be Budget Neutral:

- COVID-19 testing and related treatment is considered "emergency services"
- Retainer Payments for providers in:
 - Community-Based Adult Services (CBAS) approved under the current Section 1115 demonstration (Medi-Cal 2020);

- HCBS Section 1915(c) Waiver for Californians with Developmental Disabilities (*note: DHCS has also requested authority for retainer payments under this waiver via the Attachment K process*)
- Section 1915(i) State Plan HCBS option for Developmentally Disabled
- Interim Rate Methodology for Drug Medi-Cal Organized Delivery System (DMC-ODS) pilots
- Waiving of limits on residential treatment in DMC-ODS for COVID-19 impacted beneficiaries
- Temporary COVID -19 services and emergency housing under approved Whole Person Care pilots
- Public Hospital Redesign and Incentives in Medi-Cal (PRIME) Program - Pay for Reporting for the January 1 to June 30 period in Demonstration Year (DY) 15
- Quality Incentive Pool (QIP) directed payment program – Pay for Reporting

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 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
X	Medicaid state plan
X	Section 1915(c) of the Social Security Act (“HCBS waiver”). Provide applicable waiver numbers below: HCBS Waiver for Californians with Developmental Disabilities (waiver no. CA.0336.)
X	Section 1115(a) of the Social Security Act (i.e., existing, approved state demonstration projects). Provide applicable demonstration name/population name below:

Check to Apply	Program
	(1) Low Income Pregnant Women 109-138% FPL (2) Out of State Former Foster Care Youth Approved under California Medi-Cal 2020 Demonstration (no. 11-W-00193/9)
	Other: [<i>State to describe here</i>]

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

Check to Waive	Provision(s) to be Waived	Description/Purpose of Waiver
		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.
X	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 For providers in: (1) Community-Based Adult Services (CBAS) approved under the current Section 1115 demonstration (Medi-Cal 2020); (2) HCBS Section 1915(c) Waiver for Californians with Developmental Disabilities (<i>note: DHCS has also requested authority for retainer payments under this waiver via the Attachment K process</i>) (3) Section 1915(i) State Plan HCBS option for Developmentally Disabled
	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.

Check to Request Expenditure	Description/Purpose of Expenditure Authority
X	Other: Allow for expenditures/costs not otherwise matchable for COVID-19 testing, diagnosis, and treatment, and other State plan covered services as applicable, provided to Medi-Cal eligible inmates in a public institution setting (including jails and prisons), notwithstanding the prohibition on federal financial participation at Section 1905(a)(30)(A).
X	Other: Allow for expenditures/costs not otherwise matchable for increased bed capacity State plan covered services (including the stay and ancillary services) for Medi-Cal beneficiaries under 65 years of age that are patients in Institutions for Mental Disease, notwithstanding the prohibition on federal financial participation at Section 1905(a)(30)(B).
X	Other: Allow for expenditures/costs not otherwise matchable for medically necessary COVID-19 treatment for Medi-Cal beneficiaries under the uninsured optional eligibility group at Section 1902(a)(10)(A) at 100% FMAP, notwithstanding Sections 1902(a)(10)(XVIII) and 1905(b).
X	Other: Allow for expenditures/costs not otherwise matchable for COVID-19 testing and treatment outside of an emergency room setting as “emergency services” for restricted scope Medi-Cal beneficiaries, notwithstanding Section 1903(v) and Section 1932(b)(2).
X	Other: Allow for expenditures/costs not otherwise matchable for COVID-19 related investments for temporary emergency housing under approved Whole Person Care pilots, notwithstanding the prohibition on federal financial participation for certain types of room and board derived from Section 1903.
X	Other: Allow for expenditures/costs not otherwise matchable for certain Drug Medi-Cal Organized Delivery System (DMC ODS) claims. California is requesting a waiver of the interim rate setting methodology described on pages 5 and 6 of the DMC ODS Certified Public Expenditure (CPE) protocol approved under the current Section 1115 demonstration (Medi-Cal 2020). For Non-NTP services, the CPE protocol requires DHCS to reimburse DMC ODS counties on an interim basis pursuant to county developed and DHCS approved interim rates for each service, which are based upon the most recently calculated or estimated county costs for the specific service. DHCS is requesting, to provide interim reimbursement for claims for non-NTP services at the lower of the DMC ODS county’s CPE or the county developed and DHCS approved interim rates increased by 100 percent. DHCS would continue to complete interim and final

Check to Request Expenditure	Description/Purpose of Expenditure Authority
	reconciliations of the interim payments to allowable costs as described in the CPE protocol.
X	Other: Allow for expenditures/costs not otherwise matchable for residential treatment services in DMC ODS pilots that exceed existing stay and day limitations in the Medi-Cal 2020 Demonstration Special Terms and Conditions.
X	Other: Allow for expenditures/costs not otherwise matchable for incentive payments under the Public Hospital Redesign and Incentives in Medi-Cal (PRIME) program to participating PRIME entities for the adjusted metrics to account for the shorter performance period for July 1 to December 31 period and January 1 to June 30 period of Demonstration Year 15 on a pay-for-reporting basis. PRIME incentive payments associated with this time period would be available to participating PRIME entities that report sufficient data on a timely basis for their respective metrics under approved PRIME projects, notwithstanding the existing Medi-Cal 2020 Demonstration Special Terms and Conditions and any preexisting, approved performance targets for participating PRIME entities for Demonstration Year 15.
X	Other: Allow for expenditures/costs not otherwise matchable for Quality Incentive Pool (QIP) directed payments to participating Designated Public Hospital Systems for the adjusted metrics to account for the shorter performance period for July 1 to December 31 period and January 1 to June 30 period of Program Year 3 (SFY 2019-20) on a pay-for-reporting basis. QIP directed payments associated with this time period would be available to participating Designated Public Hospital Systems that report sufficient data on a timely basis for their respective metrics, notwithstanding the performance targets applicable to this reporting period in the CMS-approved QIP preprint under 42 CFR 438.6(c).

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

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E-mail Address: Angeli.Lee@dhcs.ca.gov

Authorizing Official (Typed): Jacey Cooper
Authorizing Official (Signature): _____
Date: Friday, April 3, 2020

Original Signed By:



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.