

Section 1135 Waiver COVID-19 State/Territory Request Template

Introduction

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and consistent with section 1135 of the Social Security Act (Act). On the same day, pursuant to section 1135 of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act to mitigate the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Daylight Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and waivers will no longer be available, upon termination of the public health emergency, including any extensions.

States/territories can request approval that certain statutes and implementing regulations be waived by CMS, pursuant to section 1135 of the Act. The following list includes some of the temporary flexibilities available to CMS under section 1135 of the Act. Please check the box on the flexibilities that the state/territory is requesting. Please include any additional flexibilities that the state/territory is requesting under the section 1135 waiver authority under “Number 6 – Other Section 1135 Waiver Flexibilities”.

Please complete the following fields:

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1) Medicaid Authorizations:

- Suspend Medicaid fee-for-service prior authorization requirements.
Section 1135(b)(1)(C) allows for a waiver or modification of pre-approval requirements if prior authorization processes are outlined in detail in the State Plan for particular benefits.
- Require fee-for-service providers to extend pre-existing authorizations through which a beneficiary has previously received prior authorization through the termination of the emergency declaration

2) Long Term Services and Supports

- Suspend pre-admission screening and annual resident review (PASRR) Level I and Level II Assessments for 30 days
- Extend minimum data set authorizations for nursing facility and skilled nursing facility (SNF) residents

3) Fair Hearings

- Allow managed care enrollees to proceed almost immediately to a state fair hearing without having a managed care plan resolve the appeal first by permitting the state to modify the timeline for managed care plans to resolve appeals to one day so the impacted appeals satisfy the exhaustion requirements
- Give enrollees more than 120 days (if a managed care appeal) or more than 90 days (if an eligibility for fee-for-service appeal) to request a state fair hearing by permitting extensions of the deadline for filing those appeals by a set number of days (e.g., an additional 120 days)

4) Provider Enrollment

- Waive payment of application fee to temporarily enroll a provider
- Waive criminal background checks associated with temporarily enrolling providers
- Waive site visits to temporarily enroll a provider
- Permit providers located out-of-state/territory to provide care to an emergency State's Medicaid enrollee and be reimbursed for that service
- Streamline provider enrollment requirements when enrolling providers
- Postpone deadlines for revalidation of providers who are located in the state or otherwise directly impacted by the emergency
- Waive requirements that physicians and other health care professionals be licensed in the state in which they are providing services, so long as they have equivalent licensing in another state
- Waive conditions of participation or conditions for coverage for existing providers for facilities

for providing services in alternative settings, including using an unlicensed facility, if the provider's licensed facility has been evacuated

5) Reporting and Oversight

- Modify deadlines for OASIS and Minimum Data Set (MDS) assessments and transmission
- Suspend 2-week aide supervision requirement by a registered nurse for home health agencies
- Suspend supervision of hospice aides by a registered nurse every 14 days' requirement for hospice agencies

6) Other Section 1135 Waiver Flexibilities. Please include any additional flexibilities that the state/territory is requesting under the Section 1135 waiver authority:

3/16/20 Request - EOHHS' priority is to ensure that new Medicaid applications and renewals can be processed in a timely manner such that access to medically necessary, Medicaid-covered services is maintained. Therefore, pursuant to 42 CFR 435.912(e)(2), Rhode Island requests authority to postpone the processing of annual Medicaid eligibility renewals for all Medicaid members that are scheduled to occur during the novel COVID-19 declaration of emergency, and postpone taking action on Medicaid eligibility determinations due to changes in circumstances affecting an individual's Medicaid eligibility for sixty (60) days or until the termination of the novel COVID-19 declaration of emergency, whichever is longer. We anticipate targeting this action first to our LTSS population. This includes the suspension of all periodic data checks for unemployment, SWICA, TALX, and other sources and suspension of quarterly Post-Eligibility Verification. This also includes suspension of adverse actions to respond to changes in any eligibility factors, including, but not limited to, income and age.

3/16/20 Request - EOHHS seeks to reduce exposure for agency workers, Medicaid members, and members of the public who would attend Medicaid fair hearings in the event of adverse determinations. Therefore, pursuant to 42 CFR 431.244(f)(4)(i)(B), EOHHS requests concurrence from CMS with EOHHS' intent to delay scheduling fair hearings and fair hearing decisions for sixty (60) days or until the termination of the novel COVID-19 declaration of emergency, whichever is longer. For Medicaid members whose request for a hearing meets the standard for an expedited fair hearing under 42 CFR 431.224, EOHHS intends to conduct hearings by telephone or video conference, whichever is most accessible for the Medicaid member.