



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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Section 1135 Medicaid Waiver Authority

Background

When the President of the United States declares a disaster or emergency under the Stafford Act or National Emergencies Act and the Department of Health and Human Services (HHS) Secretary declares a public health emergency under Section 319 of the Public Health Service Act, the HHS Secretary is authorized to use Section 1135 of the Social Security Act to modify certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements in order to allow states to respond to the emergency.

What does a Section 1135 waiver look like?

States can use these waivers to ask the HHS Secretary to modify certain provisions of the Medicaid program with the goal of increasing states' flexibility and capacity to respond to an emergency. For example, a state can request a waiver of the requirement that doctors be licensed in the state where services are rendered. State flexibility to bring in doctors from neighboring states makes it possible to increase the number of providers who are able to respond to the emergency. This is especially important in rural areas with chronic provider shortages. Waiver flexibility can also be used to waive certain federal privacy rules that may impede the delivery of crisis response services. There are other rules, such as provider clearance requirements, that can also be waived under this authority. The goal of the Section 1135 waiver is to help states eliminate barriers to emergency response.

On March 22, 2020, CMS released a tool kit for the Section 1135 waiver. It can be found [here](#).

How do states apply for a Section 1135 waiver?

A state must submit a request to the State Survey Agency or CMS Regional Office.

What is the duration of a Section 1135 waiver?

A Section 1135 waiver extends through the duration of the national emergency. A state can also ask for an extension of 60 days after the emergency ends.

How does this affect Tribes?

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. For example, Tribes may also be impacted by reimbursement arrangements made through the waiver, so it is important that Tribes work with their states to make sure that Tribal specific provisions are included. Tribes should request consultation or emergency consultation to make sure the interests of Tribes are represented in state Section 1135 waivers.

Questions?

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