



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

910 Pennsylvania Avenue, SE | Washington, D.C. 20003 | 202-507-4070 | www.nihb.org

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Section 1135 Medicaid Waiver Authority – Florida

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.

On March 16, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Florida's Section 1135 waiver, accessible [here](#). This one-pager is meant to be a general guide and is not an exhaustive description of the waiver.

What does Florida's Section 1135 waiver look like?

The waiver makes several changes to Florida's Medicaid program, as outlined below:

Provider Enrollment

CMS authorized Florida to expedite the enrollment of out of state providers who are not currently enrolled in the state's Medicaid program. Florida may continue to use existing procedures to enroll out of state providers who are already in the state's Medicaid program (with one small exception, CMS is waiving the limit on claims within a 180 day period).

CMS has also authorized providers not currently enrolled in Medicare or another state's Medicaid agency to temporarily enroll in Florida's programs. To make this possible, Florida will be allowed to waive application fee requirements, criminal background checks, site visits, and state licensure requirements. However, the program provider must maintain an out of state license. To these temporarily authorized providers, Florida must cease payment within six months of the emergency declaration being lifted, unless the providers submit an application for full participation in the program and are approved.

Pre-Approval Requirements

Florida is also authorized to temporarily waive or modify pre-approval requirements for Medicaid procedures through its fee for service program. This applies to services provided on or after March 1, 2020, through the termination of the emergency.



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Pre-Admission Screening and Annual Resident Review

Level 1 and 2 assessments can be waived for 30 days and all new admissions may be treated like exempt hospital discharges. While CMS is not setting a time frame for the completion of Resident Reviews, reviews should be completed on new admissions having a mental illness or intellectual disability diagnosis as soon as resources are available.

Allowing services in alternative settings

Pursuant to the waiver, Florida may allow services to be provided in unlicensed settings, such as temporary shelters, when a provider's facility is not available. However, services by the temporary facility must still be provided by staff of the permanent facility. After 30 days, CMS will require that the temporary facility seek licensure. If it does not, the evacuating facility will be required to find new placements for the affected individuals.

State fair hearing requests and appeal deadlines

Florida is approved to modify the timeline under which managed care enrollees can request an appeal of a denial of services. Enrollees may request a state fair hearing immediately, bypassing the requirement to exhaust all appeals with their managed care organization. Further, Florida is authorized to waive the 120 day deadline for enrollees to file an appeal with the state, provided the 120 day deadline would have occurred between March 1, 2020 and June 29, 2020. Managed care recipients in that situation will receive an additional 120 days to file their appeal for a state fair hearing. The enrollees must make this request no later than June 29, 2020.

Florida also has the flexibility to allow recipients to have "more than 90 days" to request a state fair hearing for eligibility or fee for service issues.

Even after the state has made an adverse determination, it may still offer services to the enrollee, provided the state either does not send the notice of adverse action or have reason to believe it was not received. This allows the state to continue to offer services to someone for whom an adverse action has been rendered. The state may also delay scheduling fair hearings and issuing decisions.

How does this affect Tribes?

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. Florida has two federally recognized Tribes, the Seminole Tribe of Florida and Miccosukee Tribe of Indians.



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Medicaid Disaster State Plan Amendment - Florida

Background

The Medicaid State Plan is the foundational document for a state's Medicaid program; it sets the rules for eligibility, benefits, and payments. Before a state can participate in the Medicaid program, it must file a state plan with the Centers for Medicare & Medicaid Services (CMS). There are certain requirements that a state plan must adhere to and if a state wishes to deviate from these statutory requirements, they must seek a waiver (such as a Section 1115 or Section 1915 waiver) of the usual Medicaid rules. When a state wants to amend their State Plan, they have to file what is called a "State Plan Amendment" (SPA).

On November 24, 2020, Florida was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

Cost Shares

Florida is amending its State Plan in order to suspend co-pays for all state plan services.

Non-Emergency Transportation Services

Florida is amending its State Plan in order to allow ambulances to provide non-emergency transportation services.

Service Limits

Florida is amending its State Plan in order to lift all service limits determined medically necessary to maintain access to critical, life sustaining covered services (examples include but are not limited to: the 45-day hospital inpatient limit, home health services, durable medical equipment, in-home physician's visits). Additionally, lift all service limits for prompt access to behavioral health services.

Telemedicine

Florida is amending its State Plan in order to utilize telemedicine for medically necessary services, remote patient monitoring and store and forward. Additionally, the State will expand telemedicine to include "audio only."

Preferred Drug List

Florida is amending its State Plan in order to be allowed to make exceptions to their published Preferred Drug List if drug shortages occur.

Payment Rate Increases

Florida is amending its State Plan in order to provide for payment rate increases to Intermediate Care Facilities in order to account for the higher costs caused by the COVID-19. Requests for interim rate changes reflecting increased costs occurring as a result of resident care, administration changes will be considered if the change in



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cost to the provider is at least \$5,000 and would cause a change of 1% or more based on the provider's annualized current total per diem rate. The current requirement to qualify for an interim rate adjustment is a 10% or more change annualized in the provider's current per diem rate. The State is allowing for a temporary change in this threshold.

Cost Report Sanctions

Florida is amending its State Plan in order to eliminate sanctions on nursing facilities for the late submission of Medicaid cost reports.

Questions?

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