



# National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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## Section 1135 Medicaid Waiver Authority – California

### 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 23, 2020, the Centers for Medicare & Medicaid Services (CMS) approved California's Section 1135 waiver, accessible [here](#).

On May 8, 2020, CMS approved California's 2<sup>nd</sup> Section 1135 waiver, accessible [here](#).

On August 19, 2020, CMS approved California's 3<sup>rd</sup> 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 California's Section 1135 waiver look like?

This waiver makes several changes to California's Medicaid program, as outlined below:

### **Provider Enrollment**

CMS authorized California to expedite the enrollment of out of state providers who are not currently enrolled in the state's Medicaid program. California 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 California's programs. To make this possible, California 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, California 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.

CMS has also authorized the state's request to temporarily cease revalidation of providers who are located in California or otherwise impacted by the emergency.



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## **Pre-Approval Requirements**

California 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.

## **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, California may allow services to be provided in unlicensed settings, such as a temporary shelter, when a provider's facility is not available. The state has to make a reasonable assessment that the facility meets minimum standards to ensure the health, safety, and comfort of beneficiaries and staff. The placing facility is responsible for determining reimbursements for the temporary setting.

## **State fair hearing requests and appeal deadlines**

California 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, California 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 the end of the public health emergency. Managed care recipients in that situation will receive an additional 120 days to file their appeal for a state fair hearing.

## **Extend pre-existing authorizations for which a beneficiary has previously received prior authorization through the end of the public health emergency**

California is approved to allow services approved to be provided on or after March 2020 to continue to be provided without a requirement for a new or renewed prior authorization.

## **HCBS Settings Requirements for Specified Settings**

California may offer home and community based services (HCBS) be provided in settings that have not been determined to meet HCBS setting criteria. This applies to settings that have been added since March 17, 2014 and is designed to ensure continuity of services.

## **Requirement to Obtain Beneficiary and Provider Signatures of HCBS Person-Centered Service Plan**

California may temporarily wave written consent requirements for person-centered service plans. Providers are authorized to obtain documented verbal consent from the beneficiary and those responsible for its implementation.



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## **Clinic Facility Requirement**

California has received a waiver to the requirement in 42 C.F.R. § 440.90 that services provided under that regulation be provided “by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients.” This waiver is provided only to the extent necessary to permit the state and clinic to temporarily designate a clinic practitioner’s location as part of the clinic facility so that clinic services may be provided via telehealth when neither the patient nor practitioner is physically onsite at the clinic. The waiver permits services provided via telehealth in clinic practitioners’ homes (or another location) to be considered to be provided at the clinic for purposes of 42 C.F.R. § 440.90(a).

## How does this affect Tribes?

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. California has 109 federally recognized Tribes.





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## Medicaid Disaster State Plan Amendment - California

### 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 May 13, 2020, California was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find it [here](#).

On August 20, 2020, California was approved for a 2<sup>nd</sup> Emergency SPA. You can find it [here](#).

All approvals are for the duration of the federally declared COVID-19 emergency, unless stated otherwise.

### COVID-19 Testing

California is amending their State Plan to allow for the coverage of COVID-19 testing for uninsured individuals.

The state will also tests conducted in non-office settings, such as mobile test sites.

### Less Restrictive Methodologies

California is amending their State Plan to allow for the disregarding of income up to 138% of the Federal Poverty Line for eligible for but not receiving cash assistance, age and disability poverty level.

### Presumptive Eligibility

California is amending their State Plan to allow hospitals to make presumptive eligibility determinations for individuals eligible for but not receiving cash assistance, receiving home and community based services, optional state supplement beneficiaries, PACE enrollees, age and disability poverty level, work incentives and uninsured individuals. The state will also add an additional PE period to these covered groups within a 12 month period and allows 2 PE periods within a 12 month period.

### Premiums and Cost-Shares

California is amending their State Plan to allow for the suspension of deductibles, copayments, coinsurance and other cost sharing charges such as enrollment fees, premium and similar charges for optional targeted low income children (OTLIC) and those in the Work Incentives program.



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## Counseling Visits

California has amended their State Plan to allow allows physicians and other licensed practitioners to order Medicaid Home Health Services. It also has modified its rehabilitation services benefit in the Drug Medi-Cal State Plan to extend individual counseling visits to include visits focused on short term personal, family, job/school or other problems with substance abuse. The state also removed utilization controls on covered benefits to the extent that limits cannot be exceeded.

## Telehealth

California is amending their State Plan to modify the face to face requirement for State Plan benefits/services and will be allow them to be provided via all forms telehealth and telephone, regardless of originating or distant site.

The state is authorizing telehealth payments for services that are not otherwise paid for under the Medicaid state plan or differ from the current state plan provisions governing reimbursement for telehealth. Specifically, the FQHC/RHC/Tribal 638 Clinic Telehealth and Telephonic visit, modifying the face to face requirement. The reimbursement will occur at a prospective payment systems rate for FQHC/RHC or all-inclusive rate for new or established patients irrespective of the date of the last visit. The virtual communication for face to face requirements is also modified and reimbursed for 5 minutes or more between an FQHC/RHC Tribal 638 clinical practitioner and new established patient. Through the Drug Medi-Cal State plan, the requirements for face to face contact and treat non face to face contacts will be suspended.

Ancillary costs associated with the original site for telehealth is separately reimbursed as an administrative cost by the state when a Medicaid service is delivered only for Drug Medi-Cal services.

## Prescription Drugs

California is amending their State Plan to remove the six prescription per calendar month limitation on covered outpatient drugs for all FFS Medi-Cal pharmacy providers and all covered outpatient drugs. Providers may also dispense up to 100 days in supplies at one time of all covered outpatient drugs.

Prior authorization for medication is expanded by automatic renewal without clinical review.

## Increased Payment Rates

California is amending their State Plan to increase payment rates for clinical laboratory services related to COVID 19 effective for service after March 1 2020. Increased payments for several different types of skilled nursing facilities, but does not apply to state owned nursing facilities and state owned intermediate care



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facilities. These increases are based off of an increase cost pressure to provide high volume testing due to COVID, as well as an increase for skilled nursing facilities to ensure safety of its individuals.

The state is also providing an increase of 10% for current skilled nursing facilities and the payment for clinical laboratory COVID 19 related procedure codes will be equal to the Medicare payment equivalent services.

Questions?

Please contact Christopher Chavis, Policy Analyst, at 202-750-3402 or at [cchavis@nihb.org](mailto:cchavis@nihb.org).