



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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

Updated 8/11/2020

Section 1135 Medicaid Waiver Authority – Louisiana

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 Louisiana's Section 1135 waiver, accessible [here](#).

On May 11, 2020, CMS approved Louisiana's 2nd Section 1135 waiver, accessible [here](#).

On August 7, 2020, CMS approved Louisiana's 3rd 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 Louisiana's Section 1135 waiver look like?

Provider Enrollment

CMS authorized Louisiana to expedite the enrollment of out of state providers who are not currently enrolled in the state's Medicaid program. Louisiana 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 Louisiana's programs. To make this possible, Louisiana 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, Louisiana 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 Louisiana or otherwise impacted by the emergency.



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Pre-Approval Requirements

Louisiana 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 can 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 with a mental illness or intellectual disability diagnosis as soon as resources are available.

Allowing services in alternative settings

Pursuant to the waiver, Louisiana 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

Louisiana 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, Louisiana 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.

1915(c) HCBS Waiver Level of Care Determination and Redetermination Timeline

Louisiana can modify the deadline for conducting initial evaluations of eligibility and initial assessments of need to establish a care plan. These activities no longer have to be completed before the start of care. Services will continue until the assessment can occur.

Use of Legally Responsible Individuals to Render Personal Care Services

Louisiana will be approved to temporarily allow payment for personal care services by legally responsible individuals, provided that the state makes a reasonable assessment that the caregiver is capable of rendering such services.



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

Louisiana 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.

1905(a)(7) Home Health State Plan Services Face-to-Face Timeframes

Louisiana may modify the deadline for the face-to-face encounter required for Home Health services. The face-to-face encounter does not need to be completed before the start of services and may occur at the earliest time, not to exceed 12 months from the start of service.

How does this affect Tribes?

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. Louisiana has four federally recognized Tribes, the Chitimacha Tribe of Louisiana, the Coushatta Tribe of Louisiana, the Jena Band of Choctaw Indians, and the Tunica-Biloxi Indian Tribe of Louisiana.



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Medicaid Disaster State Plan Amendment - Louisiana

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 April 20, 2020, Louisiana was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

On June 26, 2020, Louisiana was approved for a 2nd Emergency SPA. You can find that [here](#).

All approvals are until the end of the public health emergency, unless otherwise stated.

Uninsured Individuals

Louisiana is amending their State Plan in order to allow Medicaid to cover COVID-19 testing for uninsured individuals.

Premiums and Cost Shares

Louisiana is amending their State Plan in order to suspend all cost-shares.

State Residency

Louisiana is amending their State Plan to consider people who leave the state or are otherwise absent from the state due to the COVID-19 emergency to be state residents and eligible for the state's Medicaid program.

Prior Authorization

Louisiana is amending their State Plan to allow for the extension of prior authorization by automatic renewal without clinical review or time/quantity extension for:

- Any medically necessary surgical procedures
- Pediatric Day Health Center (PDHC)
- Physician administered drugs
- Durable Medical Equipment (DME)
- Hospice Services
- Therapies (physical, occupational, and speech therapy)



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Long Term Personal Care Services

Louisiana has amended their State Plan to modify the conditions under which Long Term Personal Care Services can be provided, including allowing for deviations from the approved plan of care, modify reporting requirements, and allow services to be provided in another state.

Telehealth

Louisiana is amending their State Plan to suspend the requirement that medical services outlined in the State Plan be provided face to face. These services can now be provided over telehealth.

Prior Authorization

Louisiana is amending their State Plan to allow for prior authorization of medications to be automatically renewed without a need for clinical review or time/quantity extensions.

Prescription Medication

Louisiana is amending their State Plan to allow them to make exceptions to their Preferred Drug List if drug shortages occur. This allows them to cover a brand name drug if a generic drug option is not available.

Home Services

Louisiana is amending their State Plan in order to remove language that requires Pediatric Day Healthcare Center (PDHC) closure in order for families to receive services in a residential setting.

Questions?

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