



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 – New Mexico

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

On July 1, 2020, CMS approved New Mexico's 2nd 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 New Mexico's Section 1135 waiver look like?

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

Provider Enrollment

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



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Pre-Approval Requirements

New Mexico 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, New Mexico may allow services to be provided in unlicensed settings, such as temporary shelters, 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.

Use of Legally Responsible Individuals to Render Personal Care Services

New Mexico 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.

State fair hearing requests and appeal deadlines

New Mexico 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, New Mexico 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.

New Mexico also has the flexibility to allow recipients to have up to 120 days to request a state fair hearing for eligibility or fee for service issues.

How does this affect Tribes?

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. New Mexico has 26 federally recognized Tribes.



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Medicaid Disaster State Plan Amendment – New Mexico

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

On May 7, 2020, New Mexico was approved for a 2nd Emergency SPA. You may find it [here](#).

On May 13, 2020, New Mexico was approved for a 3rd Emergency SPA. You may find it [here](#).

On May 22, 2020, New Mexico was approved for a 4th Emergency SPA. You may find it [here](#).

On June 16, 2020, New Mexico was approved for a 5th Emergency SPA. You may find it [here](#).

On August 6, 2020, New Mexico was approved for a 6th Emergency SPA. You may find it [here](#).

On October 30, 2020, New Mexico was approved for a 7th Emergency SPA. You may find it [here](#).

On November 4, 2020, New Mexico was approved for an 8th Emergency SPA. You may find it [here](#).

On November 5, 2020, New Mexico was approved for a 9th Emergency SPA. You may find it [here](#).

On December 17, 2020, New Mexico was approved for a 10th Emergency SPA. You may find it [here](#).

All approvals are for the duration of the public health emergency unless otherwise stated.

COVID-19 Testing

New Mexico is amending their State Plan to provide coverage for COVID-19 testing to the optional eligibility group.



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Presumptive Eligibility

New Mexico amends their State Plan to allow certain entities to be authorized to make presumptive eligibility determinations. A full list of these entities is available in the approved SPA (pg. 83-84). The list is varied and includes I/T/U facilities and Tribal child support agencies.

Rate Increases

New Mexico amends their State Plan in order to be allowed to apply a 50% rate increase to the Diagnosis Related Group (DRG) provider specific rates and pass-through rates for Intensive Care Unit inpatient hospital stays. New Mexico will also apply a 12.4% rate increase to the DRG provider-specific rates and pass-through rates for all other inpatient hospital stays. New Mexico will advance the distribution of Disproportionate Share Hospital (DSH) payments for the remainder of State FY.

They are also increasing by 50%, the rate for ICU inpatient hospital services; and 12.4% for all other inpatient hospital services. Increases are applied to the provider-specific DRG rates and pass-through amounts.

They will also apply a rate increase to non-hospital providers for E&M, Non-E&M and Dental services. The current reimbursement rates for these service codes will be increased as indicated below:

- Procedures codes that have a Medicare fee schedule rate that are not currently at 98% of the Medicare rate, will be increased to 98%.
- Procedure codes that do not have a Medicare fee schedule rate will be increased by 6.81%.
- Provider specific rates not adjusted annually to a Medicare rate, will have their rate increased by 6.81%.

They will also apply a rate increase of \$1 to curbside medication pick-up for all Medicaid pharmacy providers.

Payment Increases

New Mexico is amending their State Plan to apply a 30% rate increase to short term skilled and custodial nursing facility services for Medicaid members who test positive for COVID-19 and need inpatient care.

They will also apply a 12.4% rate increase to inpatient hospital stays that are not reimbursed on a DRG basis for April 1, 2020 through June 30, 2020.

They are also increasing reimbursement for services provided under the Family Infant Toddler (FIT) Program.

Supplemental Payments

New Mexico is amending their State Plan in order to implement targeted access supplemental payments for Safety-Net Care Pool (SNCP) hospitals.



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Questions?

Please contact Christopher Chavis, Policy Center Deputy Director, at 202-750-3402 or at cchavis@nihb.org.