



# National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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## Section 1135 Medicaid Waiver Authority – Oklahoma

### 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 24, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Oklahoma'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 Oklahoma's Section 1135 waiver look like?

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

### **Provider Enrollment**

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

Oklahoma is also authorized to temporarily waive or modify pre-approval requirements for Medicaid procedures through its fee for service program.



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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, Oklahoma 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.

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

Oklahoma 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, Oklahoma 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 during the period 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.

Oklahoma 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.

## How does this affect Tribes?

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. Oklahoma has 39 federally recognized Tribes.



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## Medicaid Disaster State Plan Amendment – Oklahoma

### 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 11, 2020, Oklahoma was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

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

On October 15, 2020, Oklahoma was approved for a 3<sup>rd</sup> Emergency SPA. You can find it [here](#).

On December 31, 2020, Oklahoma was approved for a 4<sup>th</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

Oklahoma is amending their State Plan to cover COVID-19 tests that are conducted in non-office settings, such as mobile test sites.

### Premiums and Cost-Shares

Oklahoma is amending their State Plan to waive cost-shares associated with COVID-19 diagnostic, testing, and treatment for any quarter in which the increased FMAP is claimed.

### Continuous Eligibility

Oklahoma is amending their State Plan to allow for 12 month continuous eligibility for children under 19, regardless of changes in circumstances.

### Independently Contracted Psychologists

Oklahoma is amending their State Plan to allow independently contracted psychologists to serve SoonerCare adults only for crisis intervention services during emergency period. They must be licensed and practicing within state scope of practice.





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## Prescription Drugs

Oklahoma is amending their State Plan to change the 34 day supply prescription quantity limit to allow for a 90 day supply.

They are also allowing for the automatic renewal of prior authorization for medications without clinical review or time/quantity extensions.

## Interim Payments

Oklahoma is amending their State Plan to allow rural/independent Medicaid-enrolled hospital to request an interim payment. If approved, the requesting provider will receive an amount equal to two months payment at the historical average month Medicaid payment.

## Potentially Preventable Readmissions

Oklahoma is amending their State Plan to waive Calendar Year 2019 penalties for the Potentially Preventable Readmission Program.

## Therapeutic Leave Days

Oklahoma is amending their State Plan to increase the number of therapeutic leave days in Nursing Facilities (NFs) from 7 days to 10 days and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs) from 60 days to 70 days. They are also waiving the provision that payments for therapeutic leave days could not exceed a maximum of 14 consecutive days per absence for ICF/IIDs.

## Supplemental Reimbursement

Oklahoma is amending their State Plan to allow supplemental reimbursement for nursing facility ventilators related to the cost of care.

## Presumptive Eligibility

Oklahoma is amending their State Plan to allow hospitals to make hospital presumptive eligibility (HPE) determinations for the non-MAGI populations to facilitate discharge into long term care (LTC) facilities.

## Questions?

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