



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 – Virginia

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

On May 19, 2020, CMS approved Virginia'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 Virginia's Section 1135 waiver look like?

Provider Enrollment

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



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Pre-Approval Requirements

Virginia 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, Virginia 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.

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

Virginia 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.

State fair hearing requests and appeal deadlines

Virginia 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, Virginia 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. Virginia 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. Virginia has seven federally recognized Tribes.



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Medicaid Disaster State Plan Amendment - Virginia

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 27, 2020, Virginia was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

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

State Residency

Virginia is amending their State Plan to allow for continued Medicaid coverage for people who leave the state due to the Public Health Emergency and intend to return.

Prescription Drugs

Virginia is amending their State Plan to cover a maximum of a 90-day supply for all drugs excluding Schedule II drugs. In Virginia, Schedule II drugs include most opioids, amphetamines, methylphenidate, etc.

Virginia will suspend refill "too soon" edits for all drugs prescribed for 34 days or less. Drugs dispensed for 90 days will be subject to a 75% refill "too-soon" edit. Patients will only be able to get a subsequent 90 day supply of drugs after 75% of the prescription has been used (approximately day 68).

Payment Rates

Virginia is amending their State Plan to increase payment rates for nursing facilities and specialized care providers to \$20.00 per person per day.

Questions?

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