



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 – Washington

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 16, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Washington's Section 1135 waiver, accessible [here](#).

On June 18, 2020, CMS approved Washington'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 Washington's Section 1135 waiver look like?

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

Provider Enrollment

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

Washington 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.



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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 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, Washington may allow services to be provided in unlicensed settings, such as temporary shelters, when a provider's facility is not available. However, services by the temporary facility must still be provided by staff of the permanent facility. After 30 days, CMS will require that the temporary facility seek licensure. If it does not, the evacuating facility will be required to find new placements for the affected individuals.

State fair hearing requests and appeal deadlines

Washington 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, Washington 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. The enrollees must make this request no later than June 29, 2020.

Washington also has the flexibility to allow fee for service recipients to have "more than 90 days" to request a state fair hearing for eligibility or fee for service issues.

Even after the state has made an adverse determination, it may still offer services to the enrollee, provided the state either does not send the notice of adverse action or have reason to believe it was not received. This allows the state to continue to offer services to someone for whom an adverse action has been rendered. The state may also delay scheduling fair hearings and issuing decisions.

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

Washington 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. Washington has 30 federally recognized Tribes.



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Emergency Section 1115 Medicaid Waiver Authority – Washington

Background

Section 1115 of the Social Security Act delegates to the Secretary of Health and Human Services the authority to approve “experimental, pilot, and demonstration projects” for the Medicaid program. Medicaid is a partnership between states and the federal government and is designed to be a health insurance program for low-income and other vulnerable populations. In their implementation of Medicaid, states have some flexibility in how they design their State Plans. However, there are some restrictions. If states wish to deliver their Medicaid program in a way that requires waiving some of these restrictions, they can design a project and submit a Section 1115 waiver to the Centers for Medicare & Medicaid Services (CMS), the agency responsible for evaluating and approving these waivers.

On April 21, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Washington’s Section 1115 waiver, accessible [here](#). This one-pager is meant to be a general guide and is not an exhaustive description of the waiver.

All approvals are until 60 days after the end of the Public Health Emergency, unless otherwise stated.

Expedited Eligibility for Long-Term Care Services and Supports

Individuals will be allowed to self-attest to income or assets in order to qualify for 1915(k) LTSS services. A person is able to receive services until it is found that they are ineligible. The state is authorized to delay for a year the need for income and asset verification and a level of care assessment.

LTSS

This waiver allows expenditures for 1915(k) LTSS services, even if the services are not timely updated in the plan of care or are delivered in an allowable alternative setting.

Home and Community Based Services (HCBS) rates

The state is allowed to pay higher rates to 1915(k) HCBS providers in order to maintain the level of providers that will be needed to address issues during the emergency. The state is currently authorized to increase rates by up to 50 percent over current rates. However, in “extraordinary circumstances,” they may request the authority to increase rates even further.

Retainer Payment

The state is allowed to make retainer payments to providers of personal care and rehabilitation services in order to maintain capacity during the emergency. The providers will be authorized to bill for services as if they’re being provided in the beneficiaries provided. This payments are limited to the lesser of 30 consecutive days or the number or days for which the state authorizes a payment of “bed hold” in a nursing facility. These payments may



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only be paid to providers who had a relationship with the beneficiary prior to the emergency. These payments also may not exceed the approved rates or average expenditure amounts paid during the previous quarter for services that may have been provided.

Modified Eligibility

The state can expand the federal poverty level for individuals who self-attest to eligibility for LTSS services but are later found ineligible. Beneficiaries can also self-attest to disability and level of care in order to receive LTSS for the duration of the emergency. The state cannot modify its eligibility to be more restrictive than it was on March 1, 2020.

Functional Assessments

The state is authorized to delay the need for a functional assessments to determine the Level of Care and Person-Centered Care Plans for beneficiaries. They are authorized to delay assessments for a year.



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Medicaid Disaster State Plan Amendment - Washington

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 March 25, 2020, Washington was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find it [here](#).

On April 7, 2020, Washington was approved for a second SPA. You can find it [here](#).

On April 13, 2020, Washington was approved for a third SPA. You can find it [here](#).

On April 24, 2020, Washington was approved for a fourth SPA. You can find it [here](#).

On July 30, 2020, Washington was approved for a fifth SPA. You can find it [here](#).

On October 23, 2020, Washington was approved for a sixth SPA. You can find it [here](#).

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

COVID-19 Antibody Testing

Washington is amending their State Plan to allow for the coverage of COVID-19 antibody testing.

Premiums and Cost Shares

Washington is amending their State Plan to allow for the suspension of enrollment fees, premiums, and similar charges for all beneficiaries.

Less Restrictive Income Methodologies

Washington is amending their State Plan to allow for the disregarding of unemployment benefits funded by the state or federal government when calculating eligibility for Medicaid benefits.

Less Restrictive Resource Methodologies



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Washington is amending their State Plan to allow for the disregarding the value of property essential for self-support (PESS) when calculating eligibility for Medicaid benefits.

Preferred Drug List

Washington amends their State Plan to allow for exceptions to their published Preferred Drug List if drug shortages occur.

State Residency

Washington is amending their State Plan to be allowed to consider individuals who have evacuated from the state due to the public health emergency and who intend to return to continue being considered state residents for the purpose of receiving Medicaid.

Non-Resident Coverage

Washington is amending their State Plan to be allowed to provide coverage to individuals who are not residents but are quarantined in the state due to COVID-19.

Expansion of COVID-19 testing and treatment

Washington is amending their State Plan to allow pharmacists practicing within their scope of practice to conduct COVID-19 testing, initiate treatment, and administer vaccines for COVID-19. They may also administer any prescribed injectable covered outpatient drug.

Licensed practitioners, including Advanced Registered Nurse Practitioners and Physician Assistants, who are practicing within their scope of practice will be able to order Medicaid home health services.

Ambulance Transportation

Washington is amending their State Plan to provide for higher reimbursement rates for suspected or confirmed COVID-19 cases, as well as interfacility transfers that are designed to clear beds in hospitals for COVID-19 cases.

Specialized Services

Washington is amending their State Plan to allow for the suspension of Specialized Services that are provided at a facility or that take the resident into the community during a state or federal emergency.

Telehealth Reimbursement

Washington is amending their State Plan to allow it to provide for the reimbursement of professional services offered over the telephone and/or online digital evaluation at the same rate as the same services provided face to face or via telemedicine. This SPA extends this provision beyond the COVID-19 emergency and says that this



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power can be invoked in the case of a “governor declared state of emergency and when the agency determines it is appropriate.” This provision is retroactive to January 1.

The state is also authorized to allow payments for telehealth services that are not otherwise paid under the Medicaid state plan. It also provides that telehealth services may be provided without any restriction on the types of technologies used.

Resident Absences

Washington is amending their State Plan to change the number of allowable absences for which they will reimburse nursing homes. Washington currently reimburses nursing facilities for resident absences not to exceed eighteen (18) days. The state is extending social/therapeutic leave to more than eighteen (18) days per calendar year with prior written approval by the Appointing Authority or their designee.

Questions?

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