



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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

Updated 10/28/2020

Section 1135 Medicaid Waiver Authority – Colorado

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 26, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Colorado's Section 1135 waiver, accessible [here](#).

On June 16, 2020, CMS approved Colorado'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 Colorado's Section 1135 waiver look like?

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

Provider Enrollment

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

Colorado 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, Colorado 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

Colorado 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, Colorado 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.

Colorado 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.

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

Colorado 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.

SPA Flexibilities: Tribal Consultation

Colorado has also been approved to modify the Tribal consultation period associated with any emergency SPA that they file to address COVID-19. This applies only to emergency provisions that will sunset at the end of the emergency. No guidance is given as to how much this period may be shortened.

How does this affect Tribes?

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. Colorado has two federally recognized Tribes, the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe.



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Medicaid Disaster State Plan Amendment - Colorado

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 21, 2020, Colorado was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

On May 6, 2020, Colorado was approved for a second SPA. It can be accessed [here](#).

On May 20, 2020, Colorado was approved for a third SPA. It can be accessed [here](#).

On October 1, 2020, Colorado was approved for a fourth SPA. It can be accessed [here](#).

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

COVID-19 Testing

Colorado is amending their State Plan to provide COVID-19 testing for uninsured populations.

They are also allowing pharmacists to administer COVID-19 tests.

Cost Shares

Colorado is amending their State Plan in order to suspend cost-shares for COVID-19 related testing and treatment. They are also authorized to waive premiums for the Buy-In program for Working Adults with Disabilities and the Buy-In Program for Children with Disabilities.

Targeted Case Management Services

Colorado is amending their State Plan in order to lift restrictions on targeted case management services for individuals with a developmental disability that need community placement due to COVID-19.

Nursing Facilities

Colorado is amending their State Plan in order to allow for increased payments to nursing facilities that are facing atypical staffing shortages due to the COVID-19 pandemic.



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Telemedicine

Colorado is amending their State Plan to remove billing restrictions around Medicaid, including the requirement that it include a visual component in order to allow telemedicine to be delivered via telephone or through Live Chat functionality. Patients will also be allowed to receive telehealth services without first establishing a relationship through a face to face visit. CMS is also waiving the requirement that physicians be licensed in Colorado, so long as they have equivalent licensing in other states.

Prior Authorization

Colorado is amending their State Plan to allow for the automatic renewal of prior authorization for prescription medication without the need for clinical review or time/quantity extensions.

Payment Methodology

Colorado is amending their State Plan to establish a COVID-19 interim payment methodology for primary care medical providers (PCMP) who provide integrated services.

Questions?

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