



# National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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## Section 1135 Medicaid Waiver Authority – Connecticut

### 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 27, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Connecticut's Section 1135 waiver, accessible [here](#).

On May 12, 2020, CMS approved Connecticut's 2<sup>nd</sup> Section 1135 waiver, accessible [here](#).

On June 17, 2020, CMS approved Connecticut's 3<sup>rd</sup> Section 1135 waiver, accessible [here](#).

On August 21, 2020, CMS approved Connecticut's 4<sup>th</sup> 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 Connecticut's Section 1135 waiver look like?

#### **Provider Enrollment**

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



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## **Pre-Approval Requirements**

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

## **Allowing services in alternative settings**

Pursuant to the waiver, Connecticut 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**

Connecticut 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, Connecticut 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.

Connecticut 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.

## **HCBS Settings Requirements for Specified Settings**

Connecticut may offer home and community based services (HCBS) be provided in settings that have not been determined to meet HCBS setting criteria. This applies to settings that have been added since March 17, 2014 and is designed to ensure continuity of services.

## **1915(k) Community First Choice State Plan Option Level of Care Determination and Redetermination Timeline**

Connecticut 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.

## **1915(i) HCBS State Plan Option Required Timeframe for Initial Evaluations and Assessments, and Re-evaluations and Reassessments**

Connecticut 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. Iowa may also modify the deadline for annual redetermination of eligibility and the annual reassessment of need. Services will continue under re-evaluation and reassessment can occur.



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## **Requirement to Obtain Beneficiary and Provider Signatures of HCBS Person-Centered Service Plan**

Connecticut may temporarily waive written consent requirements for person-centered service plans. Providers are authorized to obtain documented verbal consent from the beneficiary and those responsible for its implementation.

## **SPA Flexibilities: Tribal Consultation**

Connecticut 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.

## **Clinic Facility Requirement**

Connecticut has received a waiver to the requirement in 42 C.F.R. § 440.90 that services provided under that regulation be provided “by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients.” This waiver is provided only to the extent necessary to permit the state and clinic to temporarily designate a clinic practitioner’s location as part of the clinic facility so that clinic services may be provided via telehealth when neither the patient nor practitioner is physically onsite at the clinic. The waiver permits services provided via telehealth in clinic practitioners’ homes (or another location) to be considered to be provided at the clinic for purposes of 42 C.F.R. § 440.90(a).

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

Connecticut 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. Connecticut has two federally recognized Tribes, the Mashantucket Pequot and Mohegan Tribes.

## Questions?

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