



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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Updated 9/23/2020

Section 1135 Medicaid Waiver Authority – Maine

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 April 7, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Maine's Section 1135 waiver, accessible [here](#).

On May 28, 2020, CMS approved Maine'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 Maine's Section 1135 waiver look like?

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

Provider Enrollment

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



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completed on new admissions having a mental illness or intellectual disability diagnosis as soon as resources are available.

Pre-Approval Requirements

Maine 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, Maine 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

Maine 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, Maine 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.

Maine 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.

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

Maine may temporarily wave 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.

HCBS Settings Requirements for Specified Settings

Maine 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.

SPA Flexibilities: Tribal Consultation

Maine 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.



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How does this affect Tribes?

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



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Medicaid Disaster State Plan Amendment - Maine

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 24, 2020, Maine was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find it [here](#).

On September 22, 2020, Maine was approved for a 2nd Emergency SPA. You can find it [here](#).

On September 22, 2020, Maine was approved for a 3rd Emergency SPA. You can find it [here](#).

COVID-19 Testing

Maine is amending their State Plan to allow for the coverage of COVID-19 testing for uninsured individuals.

They are also adding a new CPT Code (U0002) for non-CDC COVID-19 lab tests.

They are also covering lab tests, including self-collected tests authorized by the FDA, that are not ordered by a physician or other licensed practitioner or provided in an office or similar facility.

Premiums and Cost Shares

Maine is amending their State Plan to allow for the suspension of co-payments for all beneficiaries who receive the following services:

- Pharmacy
- Hospital
- Medical Supplies and Equipment
- Home Health Services
- Medical Imaging
- Laboratory
- Rural Health Clinics
- Psychology



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- Mental Health Clinic
- Substance Abuse Treatment Facility
- Private Duty Nursing and Personal Care Services

They are also allowed to waive premiums, enrollment fees, and similar charges for all beneficiaries.

Preferred Drug List

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

State Residency

Maine 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.

Telehealth Reimbursement

Maine is amending their State Plan to change their telehealth billing methodology. Telephone evaluation and management (E/M) services are not to be billed if there is a need to see the patient in the office within 24 hours, the medical provider can just bill the telephone conversation as a part of the office visit. Further – if a telephone call follows an office visit within seven days and is related to the same diagnosis, it can also be considered apart of the same visit. See the SPA for the applicable CPT/HCPC codes.

The state is also approved to add teledentistry to their list of covered services.

Supplemental Payments

Maine is amending their State Plan in order to allocate a special supplemental pool for COVID-19 among the privately and publicly owned and operated Acute Care Non-Critical Access hospitals and Critical Access hospitals operating in the State of Maine. Effective April 16, 2020, the total pool shall equal ten million dollars (\$10,000,000). It will be allocated proportional to the 2016 MMIS base data distribution of MaineCare payments for inpatient and outpatient services to Acute Care Non-Critical Access hospitals and Critical Access hospitals, not to exceed the total supplemental pool amount and not to exceed allowable aggregate upper payment limits. This emergency supplemental payment will not be subject to cost settlement by the Department.

Professional Qualifications

Maine is amending their State Plan to add qualifications for direct support professionals, mental health rehabilitation technicians and behavioral health professionals. More information on this is available in the second September 22nd SPA.



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Questions?

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