



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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

Updated 9/1/2020

Section 1135 Medicaid Waiver Authority – Maryland

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

On May 6, 2020, CMS approved Maryland's 2nd Section 1135 waiver, accessible [here](#).

On July 31, 2020, CMS approved Maryland's 3rd Section 1135 waiver, accessible [here](#).

On August 31, 2020, CMS approved Maryland 4th 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 Maryland's Section 1135 waiver look like?

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

Provider Enrollment

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

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

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, Maryland 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

Maryland 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, Maryland 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.

Maryland 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.

Use of Legally Responsible Individuals to Render Personal Care Services

Maryland will be approved to temporarily allow payment for personal care services by legally responsible individuals, provided that the state makes a reasonable assessment that the caregiver is capable of rendering such services.

HCBS Settings Requirements for Specified Settings

Maryland 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.



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

Maryland 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.

Clinic Facility Requirement

Maryland 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).

SPA Flexibilities: Tribal Consultation

Maryland 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.

Targeted Case Management Timeline for Monitoring and Follow-up Activities

Maryland may modify the deadline for conducting an annual monitoring visit. They may postpone for up to one year.

How does this affect Tribes?

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. Maryland has one Urban Indian program.



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Medicaid Disaster State Plan Amendment - Maryland

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 17, 2020, Maryland was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

On May 4, 2020, Maryland was approved for a second SPA, you may find that [here](#).

All approvals are until the end of the public health emergency, unless otherwise stated.

Premiums and Cost-Shares

Maryland is amending their State Plan to waive cost-sharing for COVID-19 related testing and treatment, for any quarter in which the temporary increased FMAP is received.

Telehealth

Maryland is amending their State Plan to permit services that are currently required to be delivered face-to-face, to be delivered telephonically where appropriate. These permissions would extend to services rendered by somatic, behavioral health, and developmental disabilities providers including, but not limited to providers such as Primary Care, Nurse Practitioners, Physician Assistants, Psychiatric Rehabilitation Programs, and Targeted Case Management (TCM).

Remote Patient Monitoring

Maryland is amending their State Plan in order to expand Remote Patient Monitoring (RPM) to include all conditions that can be monitored via RPM. It is currently limited to only congestive heart failure, diabetes, and chronic obstructive pulmonary disease.

They also eliminating the current requirements before a patient can be considered for RPM and suspending the prior authorization requirement.



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Expansion of HCBS providers

Maryland is amending their State Plan to allow for the family members or legally responsible adults of recipients of personal assistance services through the Community First Choice program to receive payments for services. The state is authorized to waive certain enrollment requirements for participants. Participation in the program and payments for services have to be coordinated through the recipient's Residential Services Agency (RSA).

Payments to Non-Emergency Transportation Providers

Maryland is amending their State Plan to allow for payment to non-emergency transportation providers, either directly or through a grant to local health departments.

Questions?

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