



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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Section 1135 Medicaid Waiver Authority – Massachusetts

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

On May 8, 2020, CMS approved Massachusetts's 2nd Section 1135 waiver, accessible [here](#).

On June 16, 2020, CMS approved Massachusetts's 3rd Section 1135 waiver, accessible [here](#).

On October 29, 2020, CMS approved Massachusetts's 4th Section 1135 waiver, accessible [here](#).

On December 23, 2020, CMS approved Massachusetts's 5th 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 Massachusetts's Section 1135 waiver look like?

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

Provider Enrollment

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



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Massachusetts 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

Massachusetts 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, Massachusetts 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

Massachusetts 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, Massachusetts 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.

Massachusetts 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

Massachusetts 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.

Targeted Case Management Timeline for Monitoring and Follow-up Activities

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



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

Massachusetts 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.

Private Duty Nursing

Massachusetts may allow PDN services to be directed by a nurse practitioner, clinical nurse specialist, and/or physician assistant. This flexibility allows the state to reimburse for PDN services provided by qualified providers under the direction of nurse practitioners, clinical nurse specialists and/or physician assistants during the COVID-19 PHE.

Clinic Facility Requirement

Massachusetts has received a waiver modifying 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 provide the state’s patients with access to health services that would otherwise be unavailable during the COVID-19 PHE, by permitting 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 when neither the patient nor practitioner is physically onsite at the clinic. The waiver permits services provided in the clinic practitioner’s home and the state’s COVID-19 isolation and recovery sites to be considered to be provided at the clinic for purposes of 42 C.F.R. § 440.90(a).

SPA Flexibilities: Tribal Consultation

Massachusetts 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. Massachusetts has two federally recognized Tribes, the Mashpee Wampanoag and the Wampanoag Tribe of Gay Head (Aquinnah).



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Medicaid Disaster State Plan Amendment - Massachusetts

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 July 15, 2020, Massachusetts was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

On July 20, 2020, Massachusetts was approved for a 2nd SPA. You can find that [here](#).

On August 20, 2020, Massachusetts was approved for a 3rd SPA. You can find that [here](#).

On October 27, 2020, Massachusetts was approved for a 4th SPA. You can find that [here](#).

On December 10, 2020, Massachusetts was approved for a 5th SPA. You can find that [here](#).

On January 20, 2020, Massachusetts was approved for a 6th SPA. You can find that [here](#).

All approvals are for the duration of the public health emergency, unless stated otherwise.

Payment Rates

Massachusetts is amending their State Plan in order to increase payment rates for Applied Behavioral Analysis, Certain Children and Behavioral Health Initiatives, Early Intervention, Psychologist service rates and SUD Clinic service rates.

Cost Shares

Massachusetts is amending their State Plan in order to eliminate cost-shares for COVID-19 testing and treatment services.

They will also eliminate copays for acute inpatient hospital stays for all members.

Drug Dispensing Fee



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Massachusetts is amending their State Plan in order to update the drug benefits in order to make an adjustment to the professional dispensing fee when medications are delivered to an individual's residence.

Preferred Drug List

Massachusetts is amending their State Plan in order to allow for exceptions to the Commonwealth's preferred drug list if drug shortages occur and automatic renewal for prior authorization without clinical review.

Presumptive Eligibility

Massachusetts is amending their State Plan in order to allow Hospital Presumptive Eligibility (HPE) for individuals aged 65 and over who have income under 100% of the Federal Poverty Level.

Payment Methodologies

Massachusetts is amending their State Plan in order to update payment Methodologies For Certain Long-Term Services and Support during the COVID-19 Emergency Periods. More details on this are available on page 12-13 of the 10/27 SPA.

They also updated payment methodologies for acute inpatient and psychiatric inpatient hospital services during the PHE. More details on this are available on page 12 of the 12/10 SPA.

Provider Types

Massachusetts is amending their State Plan in order to allow nurse practitioners, clinical nurse specialists, and physician assistants order, certify and recertify member's home health care plans.

Supplemental Payments

Massachusetts is amending their State Plan in order to pay a one-time supplemental payments to chronic disease and rehabilitation inpatient hospitals.

Questions?

Please contact Christopher Chavis, Policy Center Deputy Director, at 202-750-3402 or at cchavis@nihb.org.