



# National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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## Section 1135 Medicaid Waiver Authority – Michigan

### 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 6, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Michigan's Section 1135 waiver, accessible [here](#).

On September 21, 2020, CMS approved Michigan's 2<sup>nd</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 Michigan's Section 1135 waiver look like?

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

### **Provider Enrollment**

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

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



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## **Allowing services in alternative settings**

Pursuant to the waiver, Michigan 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.

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

Michigan 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.

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

Michigan 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**

Michigan has received a waiver to the requirement 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**

Michigan 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. Michigan has twelve federally recognized Tribes.



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## Medicaid Disaster State Plan Amendment - Michigan

### 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 June 5, 2020, Michigan was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

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

On December 14, 2020, Michigan was approved for a third SPA, you may find that [here](#).

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

### Premiums and Cost-Shares

Michigan 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

Michigan is amending their State Plan to suspend face-to-face requirements for State Plan benefits/services (including individual and group counseling) that can be provided via telehealth, including telephonic services, regardless of originating or distant site.

### Provider Enrollment

Michigan is amending their State Plan to allow licensed registered nurses and licensed practical nurses to order COVID-19 laboratory testing without being required to enroll as participating providers.

### Waive Quantity Limits for DME and Medical Supplies

Michigan is amending their State Plan to waive quantity limits for DME and Medical Supplies.

The state allows physicians and other licensed practitioners, in accordance with State law, to order Medicaid Home Health services as authorized in the COVID-19 Public Health Emergency Medicare interim final rule.





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## Medical Verification for Transportation

Michigan is amending their State Plan to suspend the requirement for Medical Verification for Transportation for beneficiaries that requires special non-emergency medical transportation (vehicle or attendant), for round trip and mileage rates more than the FFS fee schedule, and transportation reimbursement requests for medical care outside a beneficiary's community when comparable care is available locally.

## Non-Emergency Ambulance Transfers

Michigan is amending their State Plan to suspend the requirement for written order for non-emergency interfacility ambulance transfers and ambulance transportation to the beneficiary's place of residence after hospital discharge.

## Prescription Drugs

Michigan is amending their State Plan to override certain point-of-sale edits to facilitate early refills. Overrides at either the pharmacy level or the call center shall be used to bypass utilization edits to allow an increased upper limit of quantities for acute medications up to 102 days supply when appropriate and permitted by Federal or State law. The overrides will also allow for early refills of prescriptions after at least half of the previous fill has been used and will continue to be allowed to bypass prescriber network requirements.

## Supplemental Payments

Michigan is amending their State Plan to provide the following supplemental payments:

Effective April 1, 2020, a supplemental payment of \$2.00 per hour will be paid to self-employed providers of personal care services and behavioral health treatment behavior technician services for in-person care and \$2.24 per hour will be paid for agency employed providers of personal care services and behavioral health treatment behavior technician services for in-person care.

Effective April 16, 2020, Nursing Facility COVID-19 Regional Hubs as designated by the State of Michigan will receive a \$5,000 per bed payment the first month to address immediate staffing needs and infrastructure changes required to assure the facilities are able to meet the patient safety protocols necessary with this higher level of care. After the first month, a supplemental payment of \$200 per beneficiary per day will be built into the per diems for nursing facility COVID-19 Regional Hubs to account for the higher costs of serving this population.

## Person Centered Plans

Michigan is amending their State Plan to extend pre-existing person-centered services plans and their amendments through the termination of the emergency declaration for personal care services, behavioral health treatment, peer-delivered or -operated support services, and targeted case management.

## DME Provider Rate



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Michigan is amending their State Plan to allow for a temporary increase to the DME provider rate for non-sterile gloves. This is being done to increased cost during the emergency period due to increased demand for personal protective equipment, including non-sterile gloves.

Questions

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