



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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

Updated 1/20/2021

Section 1135 Medicaid Waiver Authority – Minnesota

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

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

On November 2, 2020, CMS approved Minnesota's 3rd Section 1135 waiver, accessible [here](#).

On January 12, 2021, CMS approved Minnesota's 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 Minnesota's Section 1135 waiver look like?

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

Provider Enrollment

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

Minnesota 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, Minnesota 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

Minnesota 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, Minnesota 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.

Minnesota 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.

1915(c) HCBS Waiver Level of Care Determination and Redetermination Timeline

Minnesota 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.

HCBS Settings Requirements for Specified Settings

Minnesota 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.

Conflict of Interest Requirements under HCBS State Plan and Waiver Authorities

Minnesota may temporarily authorize reimbursement for Home and Community Based Services provided by an entity that also provides case management services and/or is responsible for the development of the person-centered plan in circumstances beyond what is currently allowed under existing regulations.



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

Minnesota 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.

Use of Legally Responsible Individuals to Render Personal Care Services

Minnesota 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.

Suspend Pre-Admission Screening and Annual Resident Review (PASRR) Level I and Level II Assessments for 30 days

Minnesota will be approved to allow Level I and Level II assessments to be waived for 30 days. All new admissions can be treated like exempted hospital discharges. After 30 days, new admissions with mental illness (MI) or intellectual disability (ID) should receive a Resident Review as soon as resources become available.

SPA Flexibilities: Public Notice

Minnesota has also been approved to modify the public notice 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. Minnesota has eleven federally recognized Tribes.



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Medicaid Disaster State Plan Amendment - Minnesota

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 6, 2020, Minnesota was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

On April 20, 2020, Minnesota was approved for a second and third SPA. You may find them [here](#) and [here](#).

On May 22, 2020, Minnesota was approved for a fourth SPA. You can find that [here](#).

On June 25, 2020, Minnesota was approved for a fifth SPA. You can find that [here](#).

On July 15, 2020, Minnesota was approved for a sixth SPA. You can find that [here](#).

On December 8, 2020, Minnesota was approved for a seventh SPA. You can find that [here](#).

All approvals are for the duration of the federally declared COVID-19 emergency, unless stated otherwise.

COVID-19 Testing

Minnesota is amending their State Plan to cover testing for uninsured individuals.

Premiums Cost-Shares

Minnesota is amending their State Plan to suspend copays for COVID-19 testing and treatments. They insert the caveat however that these are only suspended during the quarters in which they claim the temporarily increased FMAP.

They are also suspending disenrollment for failure to pay premiums for the populations for whom this applies. As with the previous provision, this is only applicable for the quarters in which the temporarily increased FMAP is claimed.



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Telehealth

Minnesota is amending their State Plan to allow for an expansion of telehealth.

Assessments for PCA and PCA Choices services and home health care may be conducted via telephone or other electronic means. This revision will allow the assessments to originate from the patient's home, allow for telephonic delivery to take place for all providers with a telemedicine agreement in place, lift the requirement that the initial telemedicine visit occur in person, and lift the cap on the number of telemedicine visits per week.

Required encounters for targeted case management may be conducted via telephone or other electronic means.

Group therapy may be conducted via telehealth, including via telephone.

These revisions also allow for FQHCs, RHCs, IHS, and 638 providers to be reimbursed for services at the encounter rate when they're offered via telehealth, including over the phone. They will be reimbursed as if these services are in-person encounters.

The following rehabilitative providers are also authorized to provide services via telehealth:

- Alcohol and drug counselors
- Alcohol and drug counselor temps
- Recovery peers
- Student interns
- Mental health certified peer specialists
- Mental health certified family peer specialists
- Mental health rehabilitation workers in ARMHS
- Mental health behavioral aides operating in CTSS programs

Minnesota will also allow required home visits to be conducted remotely using telephonic or other electronic means for qualified professionals (QPs) supervising persons who receive PCA Choice services.

Minnesota will also allow the face-to-face contact required by qualified providers of Early Intensive Development and Behavioral Intervention (EIDBI) services to occur via telehealth, which may include communication by telephone.

Prescription Drugs

Minnesota is amending their State Plan to allow for 90 day refills without prior authorization for certain maintenance drugs.

Targeted Case Management

Minnesota is amending their State Plan to allow required encounters for targeted case management be conducted by telephone or other electronic means.



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Less Restrictive Income

Minnesota is amending their State Plan to disregard from income, any payment made by a state, local or tribal government to relieve the adverse economic impacts of the COVID-19 pandemic for certain eligibility groups, and Disregard from assets the payments of a state, local or Tribal government to relieve the adverse economic impacts of the COVID-19 pandemic that are retained following the month of receipt during the disaster period, and/or retained following the disaster period for certain eligibility groups.

Personal Care Assistant Services

Minnesota is amending their State Plan to implement a rate increase for personal care assistant (PCA) services.

Questions?

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