



# National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

910 Pennsylvania Avenue, SE | Washington, D.C. 20003 | 202-507-4070 | [www.nihb.org](http://www.nihb.org)

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## Section 1135 Medicaid Waiver Authority – Montana

### 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 30, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Montana's Section 1135 waiver, accessible [here](#).

On June 23, 2020, CMS approved Montana's 2<sup>nd</sup> Section 1135 waiver, accessible [here](#).

On November 5, 2020, CMS approved Montana's 3<sup>rd</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 Montana's Section 1135 waiver look like?

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

#### **Provider Enrollment**

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

## **Pre-Approval Requirements**

Montana 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, Montana 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**

Montana 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, Montana 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.

Montana 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**

Montana 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.

## **1915(k) Community First Choice State Plan Option Level of Care Determination and Redetermination Timeline**

Montana 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.



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## **Use of Legally Responsible Individuals to Render Personal Care Services**

Montana 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.

## **Conflict of Interest Requirements under HCBS State Plan and Waiver Authorities**

Montana 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.

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

Montana 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.

## **1915(k) Community First Choice State Plan Option Level of Care Determination and Redetermination Timeline**

Oregon 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.

## **How does this affect Tribes?**

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. Montana has 7 federally recognized Tribes.





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## Medicaid Disaster State Plan Amendment – Montana

### 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 May 8, 2020, Montana was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

On September 3, 2020, Montana was approved for a 2<sup>nd</sup> Emergency 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

Montana is amending their State Plan to allow Medicaid to cover testing for the optional eligibility group.

### Prescription Drugs

Montana is amending their State Plan to allow for a maximum of a 90 day supply for all drugs excluding Schedule II drugs, which include most opioids.

They will also allow drugs dispensed for both 34 and 90 day refills to be refilled early and when they are at 50%. For example, 34 day drugs can be refilled at 17 days and 90 day supplies at 45 days.

### Preferred Drug List

Montana is amending their State Plan to be allowed to make exceptions to their Preferred Drugs List if drug shortages occur.

### Supplemental Payments

Montana is amending their State Plan to sue supplemental payments to Skilled Nursing and Intermediate Care Service Facilities equivalent to \$40 per day per Medicaid member effective for dates of payment March 1, 2020 through June 30, 2020. The state will not claim FFP for any amounts exceeding the applicable upper payment limit.



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## School Based Rehabilitation Service

Montana is amending their State Plan in order to continue the Comprehensive School and Community Treatment program using the methodology that was approved on December 31, 2019.

## Telehealth

Montana is amending their State Plan to establish the following requirements for telemedicine/telehealth encounters.

- To the extent possible, providers must ensure members have the same rights to confidentiality and security as provided during traditional office visits.
- Providers must follow consent and patient information protocol consistent with those followed during in person visits.
- Telemedicine/telehealth does not alter the scope of practice of any health care provider; or authorize the delivery of health care services in a setting or manner not otherwise authorized by law.
- Record keeping must comply with in Administrative Rules of Montana (ARM) 37.85.414.