



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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

Updated 12/2/2020

Section 1135 Medicaid Waiver Authority – Nebraska

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 2, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Nebraska's Section 1135 waiver, accessible [here](#).

On May 8, 2020, CMS approved Nebraska's 2nd 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 Nebraska's Section 1135 waiver look like?

Provider Enrollment

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

Nebraska is also authorized to temporarily waive or modify pre-approval requirements for Medicaid procedures. This applies to services provided on or after March 1, 2020, through the termination of the emergency.



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Allowing services in alternative settings

Pursuant to the waiver, Nebraska 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

Nebraska 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, Nebraska 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.

Nebraska 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.

SPA Flexibilities: Tribal Consultation

Nebraska 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. Nebraska has six federally recognized Tribes.



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Medicaid Disaster State Plan Amendment – Nebraska

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 24, 2020, Nebraska was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find it [here](#).

On June 18, 2020, Nebraska was approved for a 2nd and 3rd Emergency SPA. You can find it [here](#) and [here](#).

On November 2, 2020, Nebraska was approved for a 4th Emergency SPA. You can find it [here](#).

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

State Residency

Nebraska is amending its State Plan in order to consider those who have evacuated from the state or left for reasons related to the COVID-19 emergency and who are intending to return to continue being residents for purposes of receiving Medicaid.

Premiums and Cost Shares

Nebraska is amending its State Plan in order to suspend cost sharing for testing services, testing-related services, and treatment for COVID-19 (including vaccines, specialized equipment and therapies). They are also suspending premiums for Working Disabled and TMA. They are also suspending all cost sharing for all eligibility groups.

Presumptive Eligibility

Nebraska is amending its State Plan to allow for entities that are currently qualified to make determinations for pregnant women to also have the authority to provide determinations for Parent/Caretaker Relatives, Former Foster Care Children, and Children under 19.

Telehealth

Nebraska is amending its State Plan to allow for telephonic evaluation and management for patients with mild COVID-19 symptoms, beneficiaries who need routine, uncomplicated follow up and who are not currently experiencing COVID-19 symptoms, and beneficiaries requiring behavioral health assessment and management.



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Telehealth reimbursements are specifically available for home health assessments and recertifications, tobacco cessation counseling, lactation counseling services provided through EPSDT, pediatric feeding disorder outpatient therapy, community support, and hospice initial and recertification assessments.

ITUs may bill the encounter rate for telehealth services, as long as either the provider or client within the “four walls” of an ITU facility. More information is provided in the SPA approval.

They are also adding teledentistry reevaluation - post operative visit and codes and rates for teledentistry services.

Home Health Care

Nebraska is amending its State Plan in order to allow Home health to be ordered and plans of care authorized by new provider types (Nurse Practitioner, Physician Assistant, Clinical Nurse Specialist; and Nurse Midwife).

Nursing Facility Bed Hold

Nebraska is amending its State Plan in order to increase the NF bedhold to 90 days provided the bed has not been filled.

Nursing Facility Payment

Nebraska is amending its State Plan in order to establish an additional \$20 per day payment per Medicaid beneficiary for nursing facilities effective from May 1, 2020 to December 31, 2020.

Questions?

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