



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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Section 1135 Medicaid Waiver Authority – New York

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

On May 6, 2020, CMS approved New York's 2nd Section 1135 waiver, accessible [here](#).

On June 15, 2020, CMS approved New York's 3rd Section 1135 waiver, accessible [here](#).

On August 4, 2020, CMS approved New York's 4th Section 1135 waiver, accessible [here](#).

On August 19, 2020, CMS approved New York's 5th Section 1135 waiver, accessible [here](#).

On October 6, 2020, CMS approved New York's 6th 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 New York's Section 1135 waiver look like?

Provider Enrollment

CMS authorized New York to expedite the enrollment of out of state providers who are not currently enrolled in the state's Medicaid program. New York 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 New York's programs. To make this possible, New York will be allowed to waive application fee requirements, criminal background checks, site visits, and state licensure requirements. However,



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the program provider must maintain an out of state license. To these temporarily authorized providers, New York 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

New York 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, New York 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.

1905(a)(7) Home Health State Plan Services Face-to-Face Timeframes

New York may modify the deadline for the face-to-face encounter required for Home Health services. The face-to-face encounter does not need to be completed before the start of services and may occur at the earliest time, not to exceed 12 months from the start of service.

State fair hearing requests and appeal deadlines

New York 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, New York 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.

New York 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.

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



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New York 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.

HCBS Settings Requirements for Specified Settings

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

New York 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.

Conflict of Interest Requirements under HCBS State Plan and Waiver Authorities

New York 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.

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

New York 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

New York has received a waiver to 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 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).

Provision of Inpatient Psychiatric Services under Age 21 without the direction of a physician

New York has received a waiver in order to allow the provision of inpatient psychiatric services within scope for individual under age 21 without the direction of a physician or a dentist during the PHE.



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How does this affect Tribes?

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. New York has eight federally recognized Tribes.

Questions?

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