



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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

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Section 1135 Medicaid Waiver Authority – Rhode Island

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 25, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Rhode Island's Section 1135 waiver, accessible [here](#).

On May 18, 2020, CMS approved Rhode Island's 2nd 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 Rhode Island's Section 1135 waiver look like?

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

Provider Enrollment

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

For more information, visit NIHB's National Tribal COVID-19 Response page at www.nihb.org



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Rhode Island 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, Rhode Island may allow services to be provided in unlicensed settings, such as a temporary shelter, 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

Rhode Island 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.

State fair hearing requests and appeal deadlines

Rhode Island 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, Rhode Island 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.

Rhode Island 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.

How does this affect Tribes?

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. Rhode Island has one federally recognized Tribe, the Narragansett.



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Emergency Section 1115 Medicaid Waiver Authority – Rhode Island

Background

Section 1115 of the Social Security Act delegates to the Secretary of Health and Human Services the authority to approve “experimental, pilot, and demonstration projects” for the Medicaid program. Medicaid is a partnership between states and the federal government and is designed to be a health insurance program for low-income and other vulnerable populations. In their implementation of Medicaid, states have some flexibility in how they design their State Plans. However, there are some restrictions. If states wish to deliver their Medicaid program in a way that requires waiving some of these restrictions, they can design a project and submit a Section 1115 waiver to the Centers for Medicare & Medicaid Services (CMS), the agency responsible for evaluating and approving these waivers.

On July 21, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Rhode Island’s Section 1115 waiver, accessible [here](#). This one-pager is meant to be a general guide and is not an exhaustive description of the waiver.

All approvals are until 60 days after the end of the Public Health Emergency, unless otherwise stated.

Retainer Payment

The state is allowed to make retainer payments to providers of personal care services and services provided in adult day health settings using the rehabilitative services benefit as defined under section 1905(a) of the Act to maintain capacity during the emergency. The retainer payment time limit may not exceed 30 consecutive days. If the state submits and receives approval of an institutional facility bed hold State Plan Amendment (SPA) that is fewer than 30 days, then the state may only make retainer payments authorized under the 1115 authority that is equal to the institutional facility bed hold limit in the SPA. In addition, retainer payments may not exceed the approved rate(s) or average expenditure amounts paid during the previous quarter for the service(s) that would have been provided.

Amount, Duration, and Scope of Services and Comparability

The state is allowed to vary the amount, duration, and scope of services based on population needs; to provide different services to different beneficiaries in the same eligibility group, or different services to beneficiaries in the categorically needy and medically needy groups; and to allow the state to triage access to non-emergency medical transportation and long-term services and supports based on highest need.



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Medicaid Disaster State Plan Amendment – Rhode Island

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

On April 15, 2020, Rhode Island was approved for a second Emergency SPA, you can find that [here](#).

On May 13, 2020, Rhode Island was approved for a third Emergency SPA, you can find that [here](#).

On August 25, 2020, Rhode Island was approved for a fourth Emergency SPA, you can find that [here](#).

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

State Residency

Rhode Island is amending their State Plan to consider people who leave the state or are otherwise absent from the state due to the COVID-19 emergency to be state residents and eligible for the state's Medicaid program.

Expansion of CHIP

Rhode Island is amending their State Plan to provide 12 months of continuous eligibility for children under 19, regardless of changes in family income or circumstances.

Prior Authorization of Medications

Rhode Island is amending their State Plan to automatically renew prior authorization of prescription drugs without clinical review or time/quantity extensions.

Preferred Drug List

Rhode Island is amending their State Plan in order to be allowed to make exceptions to their published Preferred Drug List, in the event that drug shortages occur.

Nursing Facility Reimbursements



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Rhode Island is amending their State Plan to increase the reimbursement rate for nursing facility direct and indirect care services by 10%. This rate increase will last until June 30, 2020 or upon the termination of the public health emergency, whichever comes first.

Emergency Case Management

Rhode Island is amending their State Plan to allow for Emergency Case Management for beneficiaries who meet at least one health-related criteria and one risk-based criteria. It will be provided by homeless shelters and homeless service agencies, who specialize in assisting this unique and particularly vulnerable population.

Questions?

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