



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 – South Carolina

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 31, 2020, the Centers for Medicare & Medicaid Services (CMS) approved South Carolina's Section 1135 waiver, accessible [here](#).

On June 15, 2020, CMS approved South Carolina's 2nd 1135 waiver, accessible [here](#).

On July 7, 2020, CMS approved South Carolina's 3rd 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 South Carolina's Section 1135 waiver look like?

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

Provider Enrollment

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

South Carolina 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, South Carolina 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

South Carolina 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, South Carolina 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.

South Carolina 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.

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

South Carolina 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.

HCBS Settings Requirements for Specified Settings

South Carolina 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.



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SPA Flexibilities: Tribal Consultation

South Carolina 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. South Carolina has 1 federally recognized Tribe, the Catawba.

Medicaid Disaster State Plan Amendment – South Carolina

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 21, 2020, South Carolina was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

On May 8, 2020, South Carolina was approved for their 2nd 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

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

Nursing Facility Reimbursement

South Carolina is updating their State Plan to update the current Medicaid nursing facility rates for all private and non-state owned governmental facilities by providing for a COVID-19 4% add-on to assist and reimburse nursing facilities for the unanticipated costs incurred in their response to its coronavirus protection of residents as well as facility staff

Questions?

Please contact Christopher Chavis, Policy Analyst, at 202-750-3402 or at cchavis@nihb.org.

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



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