



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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Section 1135 Medicaid Waiver Authority – Texas

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

On May 22, 2020, CMS approved Texas's 2nd Section 1135 waiver, accessible [here](#).

On July 23, 2020, CMS approved Texas's 3rd Section 1135 waiver, accessible [here](#).

On September 30, 2020, CMS approved Texas' 4th Section 1135 waiver, accessible [here](#).

On November 25, 2020, CMS approved Texas's 5th 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 Texas's Section 1135 waiver look like?

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

Provider Enrollment

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



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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

Texas is also authorized to temporarily waive or modify pre-approval requirements for Medicaid procedures through its fee for service program.

State fair hearing requests and appeal deadlines

Texas 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, Texas 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.

Texas 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.

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

Texas 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(i) HCBS State Plan Option Required Timeframe for Initial Evaluations and Assessments, and Re-evaluations and Reassessments

Texas 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. Iowa may also modify the deadline for annual redetermination of eligibility and the annual reassessment of need. Services will continue under re-evaluation and reassessment can occur.

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

Texas 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.

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



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Texas 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

Texas 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.

Modification of 42 C.F.R. §438.420(a)(i) timeframe to continue or reinstate benefits

Texas is allowed to modify of the timeframe under 42 C.F.R. §438.420(a)(i) to allow the Medicaid managed care plan to continue benefits if requested within the current 10-day time frame or reinstate benefits for the enrollee when the individual requests continuation of benefits between 11 and 30 days if the managed care plan has not yet made a decision on the appeal and the State fair hearing is pending. The managed care plan will not seek reimbursement or payment for the additional days of services furnished during this period (aside from otherwise applicable cost sharing if any) from the enrollee.

Modification of 42 C.F.R. §431.231(a) timeframe for reinstatement of benefits related to fair hearing

Texas is allowed to extend this timeframe so that it may reinstate services and benefits for beneficiaries who request a fair hearing more than 10 days after the date of action, but not to exceed the time permitted (under either the state plan or under an approved section 1135 waiver) for beneficiaries to request a fair hearing. The state should reinstate the individual's services and benefits as quickly as practicable.

SPA Flexibilities: Public Notice

Texas has also been approved to modify the public notice 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. Texas has 3 federally recognized Tribes, Alabama-Coushatta Tribe of Texas, Kickapoo Traditional Tribe of Texas, and Ysleta Del Sur Pueblo.



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Medicaid Disaster State Plan Amendment – Texas

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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 June 15, 2020, Texas was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

On August 21, 2020, Texas was approved for a second Emergency SPA. You can find that [here](#).

On October 23, 2020, Texas approved for a third Emergency SPA. You can find that [here](#).

On December 17, 2020, Texas 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.

Payment Rates

Texas is amending their State Plan in order to increase payment rates for certain supplies, imaging and testing services and Nursing Facility services. This will now be equal to the Medicare reimbursement rate. Payment increases for the nursing facility are temporarily increased though the current Medicaid RUG rates. HHSC increased the direct care staff average hourly wage by \$2 per hour and increased the Supplies and Dietary categories by 50%. Lastly, this SPA added a temporary add-on supplemental payment for nursing facilities to support increased costs due to COVID-19.

They are also approved to reimburse for services for specimen collection, viral testing, antibody testing, and telephonic visits at rates that are equal to the Medicare reimbursement rate or comparable code for the duration of the COVID-19 federal emergency declaration.

Telehealth



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Texas is amending their State Plan to modify the face to face requirements for those under a 1915(i) State Plan and allow certain services, when clinically appropriate, to be offered via telephone or telehealth.

Prior Authorization

Texas is amending their State Plan to extend all prior authorization by automatic renewal without clinical review or time/quantity extensions.

ICF/IID Beds

Texas is amending their State Plan in order to reimburse ICF/IID(s) to reserve a bed for eligible residents during temporary leaves of absence taken to reduce the risk of COVID-19 transmission.

Questions?

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