



# National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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## Section 1135 Medicaid Waiver Authority – Utah

### 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 10, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Utah's Section 1135 waiver, accessible [here](#).

On June 12, 2020, CMS approved Utah's 2<sup>nd</sup> 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 Utah's Section 1135 waiver look like?

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

### **Provider Enrollment**

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



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completed on new admissions having a mental illness or intellectual disability diagnosis as soon as resources are available.

## **Pre-Approval Requirements**

Utah 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, Utah 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**

Utah 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, Utah 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.

Utah 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.

## **HCBS Settings Requirements for Specified Settings**

Utah 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.

## **Conflict of Interest Requirements under HCBS State Plan and Waiver Authorities**

Utah 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 service plan in circumstances beyond the limited authority provided under regulations.

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

Utah 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.



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**SPA Flexibilities: Tribal Consultation**

Utah 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. Utah has five federally recognized Tribes.





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## Medicaid Disaster State Plan Amendment - Utah

### 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 May 18, 2020, Utah was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find it [here](#).

On June 5, 2020, Utah was approved for a 2<sup>nd</sup> Emergency SPA. You can find it [here](#).

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

### COVID-19 Testing

Utah is amending their State Plan to allow for the coverage of COVID-19 testing for uninsured individuals.

The state is also allowing testing to be done in non-office facilities, such as parking lots.

### Premiums and Cost Shares

Utah is amending their State Plan to allow for the suspension of premiums and cost shares for COVID-19 testing and treatment during quarters in which the temporarily increased FMAP is claimed.

### Presumptive Eligibility

Utah is amending their State Plan to add uninsured individuals for COVID-19 testing as a Hospital Presumptive Eligibility group.

### ICF/IDD Facilities

Utah is amending their State Plan to increase bed hold/therapeutic absence days for nursing facilities and intermediate care facilities for individuals with intellectual disabilities to 60 days per calendar quarter.

### Questions?

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