



# National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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## Section 1135 Medicaid Waiver Authority – Wisconsin

### 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 20, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Wisconsin's Section 1135 waiver, accessible [here](#).

On June 5, 2020, CMS approved Wisconsin'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 Wisconsin's Section 1135 waiver look like?

#### **Provider Enrollment**

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

Wisconsin 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, Wisconsin 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.

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

Wisconsin 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.

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

Wisconsin 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.

## **SPA Flexibilities: Tribal Consultation**

Wisconsin 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. Wisconsin has 11 federally recognized Tribes.



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## Medicaid Disaster State Plan Amendment – Wisconsin

### 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 7, 2020, Wisconsin was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find it [here](#).

On June 12, 2020, Wisconsin was approved for a 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> SPA. You can find them [here](#), [here](#), and [here](#) respectively.

On June 30, 2020, Wisconsin was approved for a 5<sup>th</sup> Emergency SPA. You can find it [here](#).

All approvals are for the duration of the public health emergency unless otherwise stated.

### Enrollment Fees

Wisconsin is amending their State Plan to suspend enrollment fees for the Work Incentives group.

### Preferred Drug List

Wisconsin is amending their State Plan in order to be allowed to make exceptions to their published preferred drug list if drug shortages occur.

### Presumptive Eligibility

Wisconsin is amending their State Plan to allow hospitals to make presumptive eligibility determinations for the aged, blind, and disabled medically needy.

### Immigration

Wisconsin is amending their State Plan to provide an extension of the reasonable opportunity period for non-citizens declaring to be in a satisfactory immigration status.

### Home Health Services

Wisconsin is amending their State Plan to allow licensed practitioners to order home health services.



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Supplemental DHS Payments

Wisconsin is amending their State Plan in order to increase the cap for supplemental disproportionate hospital share (DHS) payments to qualifying hospital providers.

Questions?

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