Medicaid COVID-19 PHE Waivers & Flexibilities – 1135 Medicaid Waivers

Description of Section 1135 Waiver Policy	Relevant Regulatory Authority	Effective Date	States and Territories with Approved Section 1135 Waiver
Temporarily suspends State Plan Medicaid fee-for-service prior authorization requirements for particular benefits. Prior authorization and medical necessity processes in fee-for-service delivery systems are established, defined, and administered at state discretion and may vary on the benefit. With this 1135 waiver, states may elect to temporarily suspend these processes, as needed, during the Public Health Emergency (PHE).	42 C.F.R. §440.230(d)	3/1/2020	AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, MP, OH, OK, OR, PA, RI, VI, UT, VT, VA, WA, WV, WI, and WY (45 total)
Extends pre-existing authorizations for which a beneficiary has previously received prior authorization through the end of the PHE. Prior authorization and medical necessity processes in fee-for-service delivery systems are established, defined and administered at state discretion and may vary on the benefit. With this 1135 waiver, states may elect to extend prior authorizations for services, as needed, during the PHE.	42 C.F.R. §440.230(d)	3/1/2020	AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, KS, LA, ME, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, MP, OR, PA, RI, SC, TX, VI, VT, VA, WA, WV, and WI (42 total)
Delays Pre-Admission Screening and Annual Resident Review (PASRR) Level I and Level II Assessments for 30 days from the date of each individual's admission.	Section 1919(e)(7) of the Social Security Act and 42 C.F.R. § 483.112	3/1/2020	AL, AK, AZ, AR, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VI, UT, VT, VA, WA, WV, WI, and WY (49 total)
Temporarily extends the timeframes for individuals to request Medicaid fair hearings in fee-for-service. This 1135 waiver allows applicants and beneficiaries to have more than 90 days to request a fair hearing for eligibility or fee-for-service appeals by extending the timeframe in 42 C.F.R. §431.221(d), which requires states to choose a reasonable timeframe for eligibility or fee-for-service appeals.	42 C.F.R. § 431.221(d)	3/1/2020	AK, AR, CA, CO, CT, DE, DC, FL, GA, HI, IL, IN, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, MP, OK, OR, PA, PR, RI, SC, SD, TX, VI, UT, VT, VA, WA, WV, and WY (46 total)
Temporarily extends the timeframes for individuals to request Medicaid fair hearings in managed care. States may modify timeframes to give enrollees more than 120 days to request a state fair hearing and modify the timeframe for managed care entities to resolve appeals to no less than one day, allowing managed care enrollees to proceed almost immediately to a state fair hearing.	42 C.F.R. § 438.408(f)(1) and 42 C.F.R. § 438.408(f)(2)	3/1/2020	AR, CA, CO, DE, DC, FL, GA, HI, IL, IN, KS, KY, LA, MD, MA, MN, MS, MO, NV, NH, NJ, NM, NY, NC, ND, OK*, OR, PA, PR, RI, SD*, TX, UT, VT, VA, WA, and WV (37 total) **OK and SD made a general request for section 1135 fair hearings flexibilities and did not specify fee-for-service or managed care. The CMS approval letters for SD and OK include both FFS and managed care flexibilities, although these states currently do not have managed care organizations.*

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Description of Section 1135 Waiver Policy	Relevant Regulatory Authority	Effective Date	States and Territories with Approved Section 1135 Waiver
Allows states to provisionally, temporarily enroll providers who are enrolled with another State Medicaid Agency or with Medicare for the duration of the PHE. With respect to providers not already enrolled with another SMA or Medicare, waives certain screening requirements (payment of the application fee, criminal background checks, site visits, and in-state/territory licensure requirements) in order to temporarily enroll providers for the PHE. Also permits states to temporarily cease provider revalidation. States must also adhere to the minimum requirements outlined in the approval letter.	42 C.F.R. § 455.432, 42 C.F.R. § 455.460, 42 C.F.R. § 455.434, 42 C.F.R. § 455.450(b)(2), 42 C.F.R. § 455.450(c)(2), 42 C.F.R. § 431.52, 42 C.F.R. § 455.412, and 42 C.F.R. § 455.414	3/1/2020	AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, MP, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, VI, UT, VT, VA, WA, WV, WI, and WY (55 total)
Allows facilities, including nursing facilities (NFs), intermediate care facilities for individuals with intellectual and developmental disabilities (ICF/IDDs), psychiatric residential treatment facilities (PRTFs), and hospital NFs, to be fully reimbursed for services rendered to an unlicensed facility (during an emergency evacuation or due to other need to relocate residents where the placing facility continues to render services) provided that the state makes a reasonable assessment that the facility meets minimum standards to ensure the health, safety and comfort of beneficiaries and staff (consistent with reasonable expectations in the context of the PHE).	This waiver was issued to align with the Medicare physical environment waiver and was dependent on Medicare waiving conditions of participation. No additional Medicaid regulations were waived or modified.	3/1/2020	AK, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, MP, OH, OK, OR, PA, RI, SC, SD, TN, UT, VT, VA, WA, WV, WI, and WY (46 total)
Allows the state to modify the deadline for the initial and annual level of care (LOC) determinations required for the 1915(k) state plan benefit, as described in 42 C.F.R. §441.510(c). With this waiver, the initial determination of LOC does not need to be completed before the start of services and annual LOC determinations that exceed the 12-month authorization period will remain in place and services will continue until the assessment can occur. Reassessments may be postponed for up to one year.	42 C.F.R. § 441.510(c)	3/1/2020	AK, CT, MT, OR, and TX (5 total)

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Description of Section 1135 Waiver Policy	Relevant Regulatory Authority	Effective Date	States and Territories with Approved Section 1135 Waiver
Allows the state to modify the regulatory eligibility and assessment of need timelines associated with 1915(i) state plan benefit. With this waiver, these activities do not need to be completed before the start of care. Also allows the state to modify the deadline for annual redetermination of eligibility and reassessment of need. With these waivers, the annual eligibility determinations and reassessments of need that exceed the 12-month authorization period will remain in place and services will continue until the re-evaluation and reassessment can occur. These actions may be postponed for up to one year.	42 C.F.R. §441.715(d), 42 C.F.R. §441.715(e), 42 C.F.R. §441.720(a), and 42 C.F.R. §441.720(b)	3/1/2020	AR, CT, DC, IA, OR, and TX (6 total)
Permits the state to modify the deadline for initial and annual LOC determinations required for 1915(c) home and community-based services (HCBS) waivers. With this 1135 waiver, the initial determination of LOC does not need to be completed before the start of services and annual LOC determinations that exceed the 12-month authorization period will remain in place and services will continue until the assessment can occur. Reassessments may be postponed for up to one year.	42 C.F.R. §441.302(c)(1) and 42 C.F.R. §441.302(c)(2)	3/1/2020	CO, LA, MN, NJ, NY, NC, OH, and TX (8 total)
Temporarily allows payment for 1905(a) personal care services rendered by legally responsible individuals (which could be inclusive of legally responsible family caregivers) provided that the state makes a reasonable assessment that the caregiver is capable of rendering such services. This waiver helps ensure medically necessary services are furnished in the event the traditional provider workforce is diminished or there is inadequate capacity due to the PHE.	42 C.F.R. § 440.167(a)(2) and 42 C.F.R § 440.167(b)	3/1/2020	AK, GA, ID, IA, LA, MD, MN, MT, NH, NJ, NM, ND, OK, PA, and VT (15 total)
Temporarily allow services provided under the 1915(c) HCBS waiver program, the 1915(i) HCBS State plan benefit, and the 1915(k) Community First Choice State plan option to be provided in settings that have not been determined to meet the home and community-based settings criteria. This waiver applies to settings that have been added since the March 17, 2014 effective date of the HCBS final regulation (CMS 2249-F/2296-F), to which the HCBS settings criteria currently applies, in order to accommodate circumstances in which an individual requires relocation to an alternative setting to ensure the continuation of needed HCBS.	42 C.F.R. §441.301(c)(4) for 1915(c) waivers, 42 C.F.R. §441.530(a) for 1915(k) Community First Choice state plan option, and 42 C.F.R. §441.710(a) for 1915(i) State Plan HCBS	3/1/2020	AK, AZ, CA, CT, DC, IN, ME, MD, MA, MI, MN, MO, MT, NH, NJ, NY, OH, OR, PA, RI, SC, TN, TX, UT, VT, WA, WV, and WI (28 total)

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Description of Section 1135 Waiver Policy	Relevant Regulatory Authority	Effective Date	States and Territories with Approved Section 1135 Waiver
Permits the state to temporarily authorize reimbursement for HCBS provided by an entity that also provides case management services and/or is responsible for the development of the person-centered service plan (typically not permitted due to conflict of interest). By permitting the entity rendering case management to also render direct services, this allows for the expansion of service providers when it is necessary to increase the provider pool during the PHE.	42 C.F.R. § 441.301(c)(1)(vi) for 1915c waivers, 42 C.F.R. § 441.730(b) for 1915(i) State Plan HCBS, and 42 C.F.R. § 441.555(c) for 1915(k) Community First Choice programs	3/1/2020	AZ, MN, MT, NY, NC, OR, UT, and WA (8 total)
Allows the state to waive or modify the requirement to obtain beneficiary and provider signatures of HCBS Person-Centered Service Plans, allowing states to permit documented verbal consent as an alternate to the regulatory requirement for a signature on the person-centered service plans from beneficiaries and all providers responsible for its implementation.	42 C.F.R. § 441.301(c)(2)(ix) for 1915(c) waiver programs, 42 C.F.R. § 441.725(b)(9) for 1915(i) state plan HCBS benefit, and 42 C.F.R. § 441.540(b)(9) for 1915(k) Community First Choice programs	3/1/2020	AK, AZ, AR, CA, CO, CT, DC, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NJ, NY, ND, OH, OK, OR, PA, TX, UT, VT, WA, WV, WI, and WY (32 total)
Allows the state to modify the deadline for the face-to-face encounter required for home health services. With this waiver, 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.	42 C.F.R § 440.70(f)(1) and 42 C.F. R. § 440.70(f)(2)	3/1/2020	AK, AZ, CT, LA, MO, NH, NY, NC, OR, PA, SC, UT, and WA (13 total)
Temporarily allows payment for 1915(k) attendant services and supports rendered by an individual's representative provided that the state makes a reasonable assessment that the caregiver is capable of rendering such services. This waiver will help ensure that medically necessary services are furnished in the event the traditional provider workforce is diminished or there is inadequate capacity due to the PHE.	42 C.F.R. § 441.505	3/1/2020	AK and OR (2 total)
Modifies the deadline for conducting an annual targeted case management services monitoring visit. With this waiver, the timeframe for completion of the annual monitoring activity may be postponed up to one year.	42 C.F.R. § 440.169(d)(4)	3/1/2020	MD, MA, MO, and MT (4 total)

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Description of Section 1135 Waiver Policy	Relevant Regulatory Authority	Effective Date	States and Territories with Approved Section 1135 Waiver
Modifies timelines for managed care authorization decisions to allow two possible extensions up to 90 days each to allow the managed care plan more time to collect additional information needed to make an authorization decision that is favorable to the enrollee. Modifies timeframes to file an appeal from 60 to 120 days following the receipt of an adverse benefit determination to allow more time for the enrollee to file a request for an internal appeal with the managed care plan. Modifies timeframe for standard appeals from 14 days to 30 days to allow the managed care plan additional time to obtain necessary information, if the delay is in the enrollee's interest such as to gather information necessary for a decision that is favorable to the enrollee.	42 C.F.R. § 438.210(d)(1)(ii) and (2)(ii), 42 C.F.R. §438.402(c)(2)(ii), and 42 C.F.R. §438.408(c)(1)(ii)	3/1/2020	NY and TX (2 total)
Allows private duty nursing services to be delivered by a graduate registered nurse and/or graduate licensed practical nurse. This flexibility allows the state to reimburse for services delivered by these providers whose practice is consistent with the functions of and requirements for registered nurses and licensed practical nurses, but do not yet have the title "Registered Nurse" or "Licensed Practical Nurse".	42 C.F.R. § 440.80(a)	3/1/2020	MO and OR (2 total)
Permits the state and clinic to temporarily designate a clinic practitioner's location as part of the clinic facility only to the extent necessary so that clinic services may be provided and reimbursed *via telehealth* when neither the patient nor practitioner is physically onsite at the clinic. Services provided *via telehealth* in clinic practitioners' homes (or another location) will be considered to be provided at the clinic (i.e. meet "clinic facility requirements" at 42 C.F.R. § 440.90(a)).	42 C.F.R. § 440.90(a)	3/1/2020	AK, CA, CT, ME, MD, MI, MO, NY, NC, SD, TN, and VT (12 total)
Allows the state to modify the assessment and service plan timeframes associated with the 1915(j) Self-Directed Personal Assistance Services (PAS) Program State Plan Option. The state may modify the timeframes for conducting the assessments to make a determination that an individual requires PAS and supports, and for development of the service plan and budget. These activities do not need to be completed before the start of care. The state may also modify the deadline for annual review of the service plan enabling services to continue until the annual review can occur. These actions may be postponed for up to one year.	42 C.F.R. §441.466 and 42 C.F.R. §441.468(c)(7)	3/1/2020	OR (1 total)
Allows the state to modify the deadlines for conducting functional need initial assessments and reassessments, and the annual review of person-centered service plans for the 1915(k) Community First Choice State Plan Option. With this waiver, the initial assessment of functional need is not required to be completed before the start of care.	42 C.F.R. § 441.535, 42 C.F.R. §441.535(c), and 42 C.F.R. §441.540(c)	3/1/2020	MT and OR (2 total)
Allows provision of clinic services within scope without the direction of a physician or a dentist when provided by other licensed professionals.	42 C.F.R. §440.90	3/1/2020	PA (1 total)
Allows the provision of inpatient psychiatric services within scope for individuals under age 21 without the direction of a physician during the PHE.	42 C.F.R. §441.151(a)(1)	3/1/2020	NY and PA (2 total)
Modifies supervision requirements to allow private duty nursing services to a be directed by a nurse practitioner, clinical nurse specialist, and/or physician assistant; allows states to reimburse for private duty	42 C.F.R. § 440.80(b)	3/1/2020	MA (1 total)

Description of Section 1135 Waiver Policy	Relevant Regulatory Authority	Effective Date	States and Territories with Approved Section 1135 Waiver
nursing services provided by qualified providers under the direction of nurse practitioners, clinical nurse specialists and/or physician assistants during the COVID-19 PHE			
Allows the state to extend the regulatory timeframe to reinstate services and benefits for beneficiaries who request a fair hearing more than 10 days after the date of action (per federal regulations, states have the option to reinstate services if a beneficiary requests a fair hearing not more than 10 days after the date of action/termination). Under this waiver, the timeframe should not exceed the time permitted for beneficiaries to request a fair hearing (under either the state plan or under an approved section 1135 waiver) and the state should reinstate the individual's services and benefits as quickly as practicable.	42 C.F.R. §431.231(a)	3/1/2020	AK, CA, KY, NV, NC, RI, TX, VT, and VA (9 total)
Permits modification of timeframes 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 or the state fair hearing is pending.	42 C.F.R. §438.420(a)(i)	3/1/2020	CA, KY, NV, NC, RI, TX, VT, and VA (8 total)
Permits the state and clinic to temporarily designate a clinic practitioner's location as part of the clinic facility so that clinic services may be provided (and reimbursed) when neither the patient nor practitioner is physically onsite at the clinic. This waiver of the clinic facility requirements in 42 C.F.R. § 440.90(a) is provided only to the extent necessary to provide the state's patients with access to health services that would otherwise be unavailable during the COVID-19 PHE.	42 C.F.R. § 440.90(a)	3/1/2020	MA and NY (2 total)
Modifies State Plan Amendment (SPA) submission requirement that a SPA must be submitted by the last day of a quarter in order to take effect in that quarter. This waiver allows states to have an earlier SPA effective date.	42 C.F.R. §430.20	Date varies by individual SPA; No earlier than 3/1/2020	AK, AL, AR, AS, AZ, CA, CO, CT, DC, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MS, MO, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OK, OH, OR, PA, PR, RI, SC, SD, TX, TN, UT, VA, VI, VT, WA, WI, WV, WY, and CNMI (53 total)
Permits a waiver or modification of the public notice requirements associated with the submission of certain SPAs.	42 C.F.R. §447.205 (payment rates), 42 C.F.R. §447.57 (premiums and cost-sharing) and 42 C.F.R. §440.386 (alternative benefit plans)	Date varies by individual SPA; No earlier than 3/1/2020	AK, AL, AR, AZ, CA, CO, CT, DC, DE, FL, GA, GU, HI, IA, ID, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MS, MO, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OK, OH, OR, PA, PR, RI, SC, SD, TX, UT, VA, VI, VT, WA, WI, WV, WY, and CNMI (55 total)

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Description of Section 1135 Waiver Policy	Relevant Regulatory Authority	Effective Date	States and Territories with Approved Section 1135 Waiver
Allows a waiver or modification of the requirement to solicit advice from Indian Health Care Providers prior to submitting a State Plan Amendment. The provision does not waive Tribal Consultation but allows waiver of the timeframes and completion prior to submission.	SSA §1902(a)(73) (no regulatory citation)	Date varies by individual SPA; No earlier than 3/1/2020	AK, AL, AZ, CA, CO, CT, FL, HI, IA, ID, IL, KS, LA, MA, ME, MI, MN, MS, MO, MT, NC, ND, NE, NM, NV, NY, OK, OR, RI, SD, TX, UT, VA, WA, WI, WY (36 total)