Federal-State Section 1135 Waivers

In a national emergency, the Secretary of Department of Health and Human Services (DHHS) declares a public health emergency under Section 319 of the Public Health Service Act, the Secretary is authorized to take certain actions in addition to regular authorities. For example, under section 1135 of the Social Security Act, the Secretary may temporarily waive or modify certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements to ensure that sufficient health care items and services are available to meet the needs of beneficiaries.

The Secretary's Section 1135 waiver triggers the availability of an array of other waivers some of which are federal, federal-state, and state-only. The Secretary's foundational wavier also layout important guidelines for subsequent waivers such as effective and end dates of the waiver and waivers attached to the initial waiver. View Secretary Azar's national emergency Section 1135 for COVID-19. Additionally, CMS has the authority to clarify certain state Medicaid policy flexibilities without waivers.

Federal-State Waivers

With input from Stakeholders, the states submit requests to CMS for Medicaid and regulatory provisions which cannot be waived under a Section 1115 Research and Demonstration Waiver both to accelerate submission and finalization and to facilitate waiver of items not address in a Section 1115 waiver. View CMS's webpage for Federal-State Medicaid 1135 waiver, and view the Federal-State Medicaid Section 1135 Template recently released by CMS, and on the following pages please find a table show which states have which waivers. Hyperlinks are provided to state approval letters in the table.

Section 1135 State Waiver Request Provisions

Strategies, Relevant Legal Authorities and States Leveraging Provisions

STRATEGY	RELEVANT LEGAL AUTHORITY	States Using Provision[1]
Eligibility and Enrollment		
Allow self-attestation for all eligibility criteria (excluding citizenship and immigration status) on a case-by-case basis for individuals subject to a disaster when documentation is not available.	Authorized under existing[2] regulations 42 CFR §§ 435.945(a), 435.952(c)(3)	
Modify Medicaid/CHIP verification processes (e.g, accept self-attestation, adopt or increase reasonable compatibility thresholds).	Verification Plan	
Consider Medicaid/CHIP enrollees who are evacuated from the state as "temporarily absent" when assessing residency in order to maintain enrollment (for home state where disaster occurred or public health emergency exists)	Authorized under existing regulation 42 CFR § 403(j)(3) and 42 CFR 457.320(e)	
Increase eligibility levels for specific categories within specific geographic regions	1115 Demonstration	
Extend redetermination timelines for current enrollees subject to a disaster to maintain continuity of coverage.	Authorized under existing regulations 42 CFR § 431.211, 42 CFR § 435.912(e)(2), and 42 CFR § 435.930	FL
Adopt presumptive eligibility for eligible populations.	Presumptive Eligibility State Plan Amendment	FL
Modify additional 1915(c) enrollee targeting criteria in order to serve additional individuals.	1915(c) Waiver Appendix K	
Allow enrollees to have more than 120 days (in the case of a managed care appeal) or 90 days (in the case of an eligibility or fee-for-service appeal) to request a fair hearing.	1135 Waiver	

[1] States in **BOLD** have CMS approved waivers. States NOT in **BOLD** have submitted waiver requests.

[2] Where State Plan Medicaid Statutory language is noted or other waiver authorities are noted, states may use State Plan, Waiver Amendments or Section 1135s.

STRATEGY	RELEVANT LEGAL AUTHORITY	SELECT STATE EXAMPLES
Benefits and Cost Sharing		
Offer additional optional benefits not currently provided under the State Plan that are comparable for all categorically needy eligibility groups, statewide and have free choice of provider, or Alternative Benefit Plan, statewide that has at a minimum free choice of provider.	State Plan or Alternative Benefit Plan	
Provide benefits to a targeted group of enrollees impacted by a disaster.	1115 Demonstration	
Add services to a 1915(c) waiver that are not expressly authorized in statute (so long as the state can demonstrate the service is necessary to assist a waiver participant to avoid institutionalization and function in the community).	1915(c) Waiver Appendix K	
Waive service prior authorization requirements in fee-for-service or managed care.	1135 Waiver (fee-for-service) Managed care contract (managed care) – State Decision	FL, WA, CA, NH, NM, NJ, AZ, VA, NC, MS, IL
Extend pre-existing authorizations for which a beneficiary has previously received prior authorization through the end of the public health emergency.	Prior authorization and medical necessity processes in fee-for-service delivery systems are established, defined and administered at state/territory discretion and may vary depending on the benefit. See 42 C.F.R. §440.230(d). The State may have indicated in its approved state plan specific requirements about prior authorization processes for benefits administered through the fee-for-service delivery system. CMS interprets prior authorization requirements to be a type of pre-approval requirement for which	CA, NH, NM, NJ, AZ, VA, MS, IL

	waiver and modification authority under section 1135(b)(1)(C) of the Act is available.	
Temporarily modify requirements for co-payments to support access to services for Medicaid or CHIP enrollees.	Medicaid Cost Sharing State Plan Amendment if applying modifications statewide 1115 Demonstration if *not* applying modifications statewide CHIP State Plan Amendment for either statewide or disaster-affected individuals	
Exempt individuals subject to a disaster from payment of premiums to support access to services for Medicaid or CHIP	Authorized under existing regulation at 42 CFR § 447.55(b)(4); 42 CFR 457.510	

STRATEGY	RELEVANT LEGAL AUTHORITY	SELECT STATE EXAMPLES
Provider Workforce		
Temporarily waive provider enrollment requirements to ensure a sufficient number of providers are available to serve Medicaid enrollees. Such requirements include the payment of application fees, criminal background checks, or site visits.	1135 Waiver	FL, WA
Temporarily waive requirements around reimbursing out of state providers	1135 Waiver	FL, WA, CA, NH, NM, NJ, AZ, NC, MS, LA, IL
Temporarily allow payments from licensed facilities to temporary shelters	1135 Waiver	FL, WA, CA
Temporarily allow Medicaid payments to providers without not enrolled in Medicare or Medicaid as a provider. Example – Assisted Living	1135 Waiver	FL, WA, CA, NH, NM, NJ, AZ, NC, MS, LA, IL
Temporarily cease the revalidation of providers who are located in- state or otherwise directly impacted by a disaster.	1135 Waiver	FL, WA

STRATEGY	RELEVANT LEGAL AUTHORITY	SELECT STATE EXAMPLES
Temporarily waive requirements that physicians and other health care professionals be licensed in the state or territory in which they are providing services, so long as they have equivalent licensing in another state.	1135 Waiver *For purposes of reimbursement only.* *State law governs whether a non-federal provider is authorized to provide services in the state without state licensure. Therefore, state Compact actions needed or state relaxation of licensure guardrails.*	
Allow facilities to provide services in alternative settings, such as a temporary shelter, when a provider's facility is inaccessible.	1135 Waiver	FL, WA, CA, NH
Provider Workforce		
Flexibility to temporarily delay scheduling of Medicaid Fair Hearings and issuing Fair Hearing Decisions during the Emergency Period. CMS cannot waive parts of 42 CFR 438 Subpart F related to appeals of adverse benefit determinations which occur before Fair Hearings for Medicaid managed care enrollees or parts of 42 CFR 431, subpart E. However, CMS is able to modify the timeframes associated with appeals and fair hearings.	1135 Waiver Modification of the timeframe for managed care entities to resolve appeals under 42 C.F.R. §438.408(f)(1) before an enrollee may request a State fair hearing to zero days in accordance with the requirements specified below.	FL, WA, CA, NH, NM, NJ, VA, NC, MS, LA, IL
PASRR process requires that all applicants to Medicaid-certified nursing facilities be given a preliminary assessment to determine whether they might have SMI or ID. This is called a "Level I screen." Those individuals who test positive at Level I are then evaluated in depth, called "Level II" PASRR. The results of this evaluation result in a determination of need, determination of appropriate setting, and a set of recommendations for services to inform the individual's plan of care. Regulations governing PASRR are found in the Code of Federal Regulations, primarily at 42 CFR 483.100-138. On February 14, 2020 the Centers for Medicare & Medicaid Services published a Notice of Proposed Rule Making and Fact Sheet related to	1135 Waiver	FL, WA, AL, NH, NM, NJ, AZ, NC, MS, LA, IL

STRATEGY	RELEVANT LEGAL AUTHORITY	SELECT STATE EXAMPLES
PASRR. Level 1 and Level 2 assessments can be waived for 30 days. All new admissions can be treated like exempted hospital discharges. After 30 days, new admissions with mental illness (MI) or intellectual disability (ID) should receive a Resident Review as soon as resources become available.		
Public notice for state plan amendments (SPAs) are required under 42 C.F.R 447.205 for changes in statewide methods and standards for setting Medicaid payment rates, 42 C.F.R. 447.57 for changes to premiums and cost sharing and 42 C.F.R. 440.386 for changes to Alternative Benefit Plans (ABPs). This is to ensure that the impacted public has reasonable opportunity to comment on such SPAs. Therefore, for SPAs that only provide or increase beneficiary access to items and services related to COVID-19 (such as cost sharing waivers, payment rate increases, or amendments to ABPs adding services or providers) and would not be a restriction or limitation on payment or services or otherwise burden beneficiaries and providers, and that are temporary, with a specified sunset date related to COVID-19, CMS approves the state's request to waive public notice under section 1135(b)(1)(C) of the Act– to modify and waive preapproval requirements. We encourage the state to make all relevant information available to the public so they are aware of the changes. Similarly, the state has flexibility in modifying their tribal consultation timeframe, including shortening the number of days before submission or conducting consultation after submission of the SPA.	1135 Waiver	WA