

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



May 26, 2020

Lori Shibinette RN, MBA, NHA
Commissioner
Department of Health and Human Services
129 Pleasant Street
Concord, New Hampshire 03301

Re: Section 1135 Flexibilities Requested in March 26, 2020 Communication Second Request

Dear Commissioner Shibinette:

The Centers for Medicare & Medicaid Services (CMS) granted an initial approval to the State of New Hampshire for multiple Section 1135 flexibilities on March 23, 2020. Your follow-up communications to CMS sent on March 26, 2020 detailed a number of additional federal requirements that also pose issues or challenges for the health care delivery system in New Hampshire and requested a waiver or modification of those additional requirements. Attached, please find a response to your requests for waivers or modifications, pursuant to section 1135 of the Social Security Act (Act), to address the challenges posed by COVID-19. This approval addresses those requests related to Medicaid. This applies to the waivers included below, as well as the 1135 waivers granted to the state on March 26, 2020.

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Act. On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by CMS, to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and section 1135 waivers will no longer be available, upon termination of the public health emergency, including any extensions.

To streamline the section 1135 waiver request and approval process, CMS has issued a number of blanket waivers for many Medicare provisions, which primarily affect requirements for individual facilities, such as hospitals, long term care facilities, home health agencies, and so on. Waiver or modification of these provisions does not require individualized approval, and, therefore, these authorities are not addressed in this letter. Please refer to the current blanket waiver issued by CMS that can be found at: <https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>.

This letter is in response to all requests submitted to CMS. If the state/territory determines that it has additional needs, please contact your state lead and CMS will provide the necessary technical assistance for any additional submissions.

Please contact Jackie Glaze, Deputy Director, Medicaid and CHIP Operations Group, at (404) 387-0121 or by email at Jackie.Glaze@cms.hhs.gov if you have any questions or need additional information. We appreciate the efforts of you and your staff in responding to the needs of the residents of the State of New Hampshire and the health care community.

Sincerely,

A handwritten signature in black ink, appearing to read "Calder Lynch", with a long, sweeping underline that extends to the right.

Calder Lynch
Deputy Administrator and Director

STATE OF NEW HAMPSHIRE
APPROVAL OF FEDERAL SECTION 1135 WAIVER REQUESTS

CMS Response: May 26, 2020

To the extent applicable, the following waivers and modifications also apply to CHIP.

Provider Enrollment

New Hampshire currently has the authority to rely upon provider screening that is performed by other State Medicaid Agencies (SMAs) and/or Medicare. As a result, New Hampshire is authorized to provisionally, temporarily enroll providers who are enrolled with another SMA or Medicare for the duration of the public health emergency.

Under current CMS policy, as explained in the Medicaid Provider Enrollment Compendium (7/24/18), at pg. 42, <https://www.medicaid.gov/affordable-care-act/downloads/program-integrity/mpec-7242018.pdf>, New Hampshire may reimburse otherwise payable claims from out-of-state providers not enrolled in New Hampshire Medicaid program if the following criteria are met:

1. The item or service is furnished by an institutional provider, individual practitioner, or pharmacy at an out-of-state/territory practice location– i.e., located outside the geographical boundaries of the reimbursing state/territory’s Medicaid plan,
2. The National Provider Identifier (NPI) of the furnishing provider is represented on the claim,
3. The furnishing provider is enrolled and in an “approved” status in Medicare or in another state/territory’s Medicaid plan,
4. The claim represents services furnished, and;
5. The claim represents either:
 - a. A single instance of care furnished over a 180-day period, or
 - b. Multiple instances of care furnished to a single participant, over a 180-day period

For claims for services provided to Medicaid participants enrolled with New Hampshire Medicaid program, CMS will waive the fifth criterion listed above under section 1135(b)(1) of the Act. Therefore, for the duration of the public health emergency, New Hampshire may reimburse out-of-state providers for multiple instances of care to multiple participants, so long as the other criteria listed above are met.

If a certified provider is enrolled in Medicare or with a state Medicaid program other than New Hampshire, New Hampshire may provisionally, temporarily enroll the out-of-state provider for the duration of the public health emergency in order to accommodate participants who were displaced by the emergency.

With respect to providers not already enrolled with another SMA or Medicare, CMS will waive the following screening requirements under 1135(b)(1) and (b)(2) of the Act, so the state may provisionally, temporarily enroll the providers for the duration of the public health emergency:

1. Payment of the application fee - 42 C.F.R. §455.460
2. Criminal background checks associated with Fingerprint-based Criminal Background Checks - 42 C.F.R. §455.434
3. Site visits - 42 C.F.R. §455.432
4. In-state/territory licensure requirements - 42 C.F.R. §455.412

CMS is granting this waiver authority to allow New Hampshire to enroll providers who are not currently enrolled with another SMA or Medicare so long as the state meets the following minimum requirements:

1. Must collect minimum data requirements in order to file and process claims, including, but not limited to NPI.
2. Must collect Social Security Number, Employer Identification Number, and Taxpayer Identification Number (SSN/EIN/TIN), as applicable, in order to perform the following screening requirements:
 - a. OIG exclusion list
 - b. State licensure – provider must be licensed, and legally authorized to practice or deliver the services for which they file claims, in at least one state/territory
3. New Hampshire must also:
 - a. Issue no new temporary provisional enrollments after the date that the emergency designation is lifted,
 - b. Cease payment to providers who are temporarily enrolled within six months from the termination of the public health emergency, including any extensions, unless a provider has submitted an application that meets all requirements for Medicaid participation and that application was subsequently reviewed and approved by New Hampshire before the end of the six-month period after the termination of the public health emergency, including any extensions, and
 - c. Allow a retroactive effective date for provisional temporary enrollments that is no earlier than March 1, 2020.

Under section 1135(b)(1)(B), CMS is also approving New Hampshire's request to temporarily cease revalidation of providers who are located in New Hampshire or are otherwise directly impacted by the emergency.

Use of Legally Responsible Individuals to Render Personal Care Services

Pursuant to section 1135(b)(1)(B) of the Act, CMS approves a waiver to temporarily allow payment for 1905(a) personal care services rendered by family caregivers or legally responsible individuals providing that the state makes a reasonable assessment that the caregiver is capable of rendering such services. This waiver will ensure that medically necessary services are furnished in the event the traditional provider workforce is diminished or there is inadequate capacity due to the public health emergency.

HCBS Settings Requirements for Specified Settings

Pursuant to section 1135(b)(1)(B) of the Act, CMS approves a waiver to temporarily allow services provided under the 1915(c) HCBS waiver program, the 1915(i) HCBS State plan benefit, and the Community First Choice State plan option at 1915(k) 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, to accommodate circumstances in which an individual requires relocation to an alternative setting to ensure the continuation of needed home and community-based services.

Duration of Approved Waivers

Unless otherwise specified above, the section 1135 waivers described herein are effective March 1, 2020 and will terminate upon termination of the public health emergency, including any extensions. In no case will any of these waivers extend past the last day of the public health emergency (or any extension thereof).