

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



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June 23, 2020

Marie Matthews  
Medicaid & CHIP Director  
Montana Department of Public Health & Human Services  
P.O. Box 4210  
Helena, Montana 59604

Re: Section 1135 Flexibilities Requested in June 18, 2020 Communication (Second Request)

Dear Ms. Matthews:

The Centers for Medicare & Medicaid Services (CMS) granted an initial approval to the State of Montana for multiple section 1135 flexibilities on March 30, 2020. Your follow-up communication to CMS on June 18, 2020 detailed a number of additional federal requirements that also pose issues or challenges for the health care delivery system in Montana 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. To the extent the requirements the state requested to waive or modify apply to CHIP, the state may apply the approved flexibilities to CHIP. This applies to the waivers included below, as well as the 1135 waivers granted to the state on March 30, 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.

CMS continues to work on the additional waiver or modification requests that are not currently reflected in the attached approval. For those waiver or modification requests that require approval under authority other than section 1135, such as under applicable regulations, through an amendment to the state plan, or through a section 1115 demonstration, my staff will continue to work with your team to review and make determinations regarding approval as quickly as possible.

Please contact Jackie Glaze, Deputy Director, Medicaid and CHIP Operations Group, at (404) 387-0121 or by email at [Jackie.Glaze@cms.hhs.gov](mailto: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 Montana and the health care community.

Sincerely,

A handwritten signature in black ink, appearing to read "Calder Lynch". The signature is fluid and cursive, with a large initial "C" and "L".

Calder Lynch  
Deputy Administrator and Director

STATE OF MONTANA  
APPROVAL OF FEDERAL SECTION 1135 WAIVER REQUESTS

**CMS Response: June 23, 2020**

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

**State Plan Amendment (SPA) Flexibilities: Submission Deadline, Public Notice, and Tribal Consultation**

Pursuant to section 1135(b)(5) of the Act, for the period of the public health emergency, CMS is modifying, the requirement at 42 C.F.R. §430.20 that the state submit SPAs related to the COVID-19 public health emergency by the final day of the quarter, to obtain a SPA effective date during the quarter, enabling SPAs submitted after the last day of the quarter to have an effective date in a previous quarter, but no earlier than the effective date of the public health emergency.

Pursuant to section 1135(b)(1)(C) of the Act, CMS is also waiving public notice requirements applicable to the state plan amendment (SPA) submission process. Public notice for SPAs is 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). Pursuant to section 1135(b)(1)(C), as applicable, CMS is approving the state's request flexibility to waive these notice requirements otherwise applicable to SPA submissions.

Pursuant to section 1135(b)(5) of the Act, CMS is also allowing states to modify the timeframes associated with tribal consultation required under section 1902(a)(73) of the Act, including shortening the number of days before submission or conducting consultation after submission of the SPA.

These waivers or modifications of the requirements related to SPA submission timelines, public notice, and tribal consultation apply only with respect to SPAs that meet the following criteria: (1) the SPA provides or increases beneficiary access to items and services related to COVID-19 (such as by waiving or eliminating cost sharing, increasing payment rates or amending ABPs to add services or providers); (2) the SPA does not restrict or limit payment or services or otherwise burden beneficiaries and providers; and, (3) the SPA is temporary, with a specified sunset date that is not later than the last day of the declared COVID-19 public health emergency (or any extension thereof). We nonetheless encourage states to make all relevant information about the SPA available to the public so they are aware of the changes.

**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.

### **1915(k) Community First Choice State Plan Option Level of Care Determination and Redetermination Timeline**

Pursuant to section 1135(b)(5) of the Act, CMS approves a waiver allowing the state to modify the deadline for initial and annual level of care 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 level of care does not need to be completed before the start of services and the annual level of care determinations that exceeds the 12-month authorization period will remain in place and services will continue until the assessment can occur. A reassessment may be postponed for up to one year.

### **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 legally responsible individuals (which could be inclusive of legally responsible family caregivers) 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.

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

Pursuant to section 1135(b)(1)(B) of the Act, CMS is granting authority to permit the state to 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. This waiver applies to provisions at 42 C.F.R. §441.301(c)(1)(vi) for 1915(c) HCBS waivers, 42 C.F.R. §441.555(c) for 1915(k) Community First Choice, and 42 C.F.R. §441.730(b) for 1915(i) State Plan HCBS.

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

Pursuant to section 1135(b)(1)(C) of the Act, CMS is granting authority to permit the state to temporarily waive written consent required under home and community based service programs under 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) HCBS state plan programs, and 42 C.F.R. §441.540(b)(9) for 1915(k) Community First Choice programs that require person-centered service plans receive written consent from beneficiaries and be signed by beneficiaries and all providers responsible for its implementation and permit documented verbal consent as an alternate.

### **Targeted Case Management Timeline for Monitoring and Follow-up Activities**

Pursuant to section 1135(b)(5) of the Act, CMS approves a waiver allowing the state to modify the deadline for conducting an annual monitoring visit, as described in 42 C.F.R. §440.169(d)(4). With this waiver, the timeframe for completion of the annual monitoring activity may be postponed up to one year.

### **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).