

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



August 28, 2020

Mr. Dave Richard
Deputy Secretary for Medical Assistance
Division of Health Benefits
NC Department of Health and Human Services
1985 Umstead Drive
2501 Mail Service Center
Raleigh, North Carolina 27699-2501

Re: Section 1135 Flexibilities Requested in August 13, 2020 Communication (Third Request)

Dear Mr. Richard:

The Centers for Medicare & Medicaid Services (CMS) granted an initial approval to the State of North Carolina for multiple section 1135 flexibilities on March 23, 2020. Your follow-up communication to CMS on August 13, 2020 detailed a number of additional federal requirements that also pose issues or challenges for the health care delivery system in North Carolina 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 23, 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>.

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 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 North Carolina and the health care community.

Sincerely,

A handwritten signature in black ink that reads "Anne Marie Costello". The signature is written in a cursive, flowing style.

Anne Marie Costello
Acting Center Director

STATE OF NORTH CAROLINA
APPROVAL OF FEDERAL SECTION 1135 WAIVER REQUESTS

CMS Response: August 28, 2020

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

Extend pre-existing authorizations for which a beneficiary has previously received prior authorization through the end of the public health emergency.

If prior authorization processes are outlined in North Carolina's state plan for particular benefits, CMS is using the flexibilities afforded under section 1135(b)(1)(C) of the Act that allow for waiver or modification of pre-approval requirements to permit services approved to be provided on or after March 1, 2020, to continue to be provided without a requirement for a new or renewed prior authorization, through the termination of the public health emergency, including any extensions (up to the last day of the emergency period under section 1135(e) of the Act), for beneficiaries with a permanent residence in the geographic area of the public health emergency declared by the Secretary.

1915(c) HCBS Waiver Level of Care Determination and Redetermination Timeline

Pursuant to section 1135(b)(5) of the Act, CMS is allowing the state to modify the deadline for initial and annual level of care determinations required for the 1915(c) HCBS waiver, as described in 42 C.F.R. §441.302(c)(1) and (c)(2), respectively. 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.

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.

1905(a)(7) Home Health State Plan Services Face-to-Face Timeframes

Pursuant to section 1135(b)(5) of the Act, CMS approves a waiver allowing the state to modify the deadline for the face-to-face encounter required for Home Health services, as described in 42 C.F.R. §440.70(f)(1) and 440.70(f)(2). 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.

Clinic Facility Requirement

Pursuant to section 1135(b)(1)(B) of the Act, CMS approves a waiver modifying the requirement in 42 C.F.R. §440.90 that services provided under that regulation be provided “by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients.”

This waiver is provided only to the extent necessary to permit 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 via telehealth when neither the patient nor practitioner is physically onsite at the clinic. The waiver permits services provided via telehealth in clinic practitioners’ homes (or another location) to be considered to be provided at the clinic for purposes of 42 C.F.R. §440.90(a).

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).