



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

LANSING

GRETCHEN WHITMER
GOVERNOR

ROBERT GORDON
DIRECTOR

April 1, 2020

Ms. Jackie Glaze
Acting Director
Medicaid and CHIP Operations Group Center
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Request for Waivers Under Section 1135 of the Social Security Act

Dear Ms. Glaze:

The State of Michigan urgently requests that the Centers for Medicare & Medicaid Services (CMS) waive select federal healthcare laws and regulations, as outlined in the attached document, in response to the outbreak of the coronavirus disease 2019 (COVID-19).

On January 31, 2020, the Secretary of the US Department of Health and Human Services declared a nationwide public health emergency under Section 319 of the Public Health Service Act. Subsequent to that, President Trump declared a national emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. These declarations provide CMS the authority to grant waivers to the State under Section 1135 of the Social Security Act. To bolster the federal response, Michigan Governor Gretchen Whitmer declared a state of emergency to maximize efforts and control the spread of COVID-19. Governor Whitmer has also issued several executive orders and directives to increase access to essential health care services and operations. Despite the decisive action, the number of individuals testing positive for COVID-19 has grown at an alarming rate. The Michigan Department of Health and Human Services (MDHHS) is seeking waiver flexibilities under Section 1135 that will allow it to better support statewide action.

The attached list represents Michigan's initial requested flexibilities under the Section 1135 authority in connection with the COVID-19 outbreak and emergency. These waivers will grant Michigan the flexibility to fully address the health needs of Medicaid beneficiaries during this crisis. Additional policies and guidance will be issued by the State to explicitly address the application of these waivers and ensure the granted flexibilities achieve their targeted intent. Using its permitted authority and discretion, Michigan may modify, manage, or provide clarification to limit any unintended consequences that arise. Because circumstances surrounding this emergency are dynamic and fluid, Michigan may subsequently request the approval of additional flexibilities as the situation evolves.

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I am submitting these waiver requests on behalf MDHHS, which includes the Medical Services Administration, the single State agency for Medicaid in Michigan, and the Behavioral Health and Developmental Disabilities Administration, Michigan's single State authority for mental health and substance use disorders, which provides operational oversight to Michigan's specialty behavioral health Medicaid benefit. This request also incorporates feedback from key health care stakeholders with whom the State is working closely with to address the COVID-19 public health emergency.

Thank you in advance for your swift attention to this critical matter and please contact me immediately if additional information is required.

Sincerely,

A handwritten signature in cursive script that reads "Robert Gordon".

Robert Gordon
Director

RG:drr

Enclosures

cc: James G. Scott, Director
Ruth A. Hughes, Deputy Director
Nicole McKnight, Branch Manager
Keri Toback, State Lead

**Section 1135 Waiver COVID-19
State/Territory Request Template**

Introduction

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 Social Security Act (Act). On the same day, pursuant to section 1135 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 to mitigate the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (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 Daylight Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and waivers will no longer be available, upon termination of the public health emergency, including any extensions.

States/territories can request approval that certain statutes and implementing regulations be waived by CMS, pursuant to section 1135 of the Act. The following list includes some of the temporary flexibilities available to CMS under section 1135 of the Act. Please check the box on the flexibilities that the state/territory is requesting. Please include any additional flexibilities that the state/territory is requesting under the section 1135 waiver authority under “Number 6 – Other Section 1135 Waiver Flexibilities”.

Please complete the following fields:

State/Territory Name: Michigan

Contact Name: Kate Massey

**Contact Title and Agency: Senior Deputy Director, Medical Services Administration
Michigan Department of Health and Human Services**

Email: MasseyK4@michigan.gov

Phone: (517) 241-7882

Date Submitted: 4/1/2020

1) Medicaid Authorizations:

- Suspend Medicaid fee-for-service prior authorization requirements. Section 1135(b)(1)(C) allows for a waiver or modification of pre-approval requirements if prior authorization processes are outlined in detail in the State Plan for particular benefits
- Require fee-for-service providers to extend pre-existing authorizations through which a beneficiary has previously received prior authorization through the termination of the emergency declaration

(Note: Michigan Medicaid policy will provide detail on which prior authorization requirements are suspended and/or extended)

2) Long Term Services and Supports

- Suspend pre-admission screening and annual resident review (PASRR) Level I and Level II Assessments for 30 days
- Extend minimum data set authorizations for nursing facility and skilled nursing facility (SNF) residents

3) Fair Hearings

- Allow managed care enrollees to proceed almost immediately to a state fair hearing without having a managed care plan resolve the appeal first by permitting the state to modify the timeline for managed care plans to resolve appeals to one day so the impacted appeals satisfy the exhaustion requirements
- Give enrollees more than 120 days (if a managed care appeal) or more than 90 days (if an eligibility for fee-for-service appeal) to request a state fair hearing by permitting extensions of the deadline for filing those appeals by a set number of days (e.g., an additional 120 days)

4) Provider Enrollment

- Waive payment of application fee to temporarily enroll a provider
- Waive criminal background checks associated with temporarily enrolling providers
- Waive site visits to temporarily enroll a provider
- Permit providers located out-of-state/territory to provide care to an emergency State's Medicaid enrollee and be reimbursed for that service
- Streamline provider enrollment requirements when enrolling providers

- Postpone deadlines for revalidation of providers who are located in the state or otherwise directly impacted by the emergency
- Waive requirements that physicians and other health care professionals be licensed in the state in which they are providing services, so long as they have equivalent licensing in another state
- Waive conditions of participation or conditions for coverage for existing providers for facilities for providing services in alternative settings, including using an unlicensed facility, if the provider's licensed facility has been evacuated

(Note: Michigan Medicaid policy will provide detail on which provider enrollment requirements are amended)

5) Reporting and Oversight

- Modify deadlines for OASIS and Minimum Data Set (MDS) assessments and transmission
- Suspend 2-week aide supervision requirement by a registered nurse for home health agencies
- Suspend supervision of hospice aides by a registered nurse every 14 days' requirement for hospice agencies

6) Other Section 1135 Waiver Flexibilities. Please include any additional flexibilities that the state/territory is requesting under the Section 1135 waiver authority:

Suspend Face to Face Interactions:

- The State of Michigan is requesting that providers be allowed to use telephonic, telemedicine and video technology commonly available on smart phones for program functions that require in-person communication- so long as they meet CMS and Office of Civil Rights (OCR) guidance and the beneficiary or legal representative consents to the method. This includes initial assessments, re-assessments, Nursing Facility Level of Care Determinations, care planning meetings, home visits, case management, and provider assessment and monitoring, medication therapy management, as well as for durable medical equipment (DME) and medical supplies. In lieu of the required written consent or beneficiary signatures, verbal permission may be obtained and must be documented. Required written consent or signatures must be obtained at the next in-person opportunity.
- The State of Michigan is requesting the authority to provide FQHCs, RHCs, and Tribal 638 Clinics with greater flexibility as specified under this telehealth policy. Waiver of requirement for Tribal 638 clinics that services be provided within the clinic four walls except for homeless populations per 42 C.F.R. §440.90 to allow for screening and testing away from patient areas and allow for services to homebound and others.

Allow telephonic as part of telehealth:

The State of Michigan is requesting that telephonic (audio) only be allowed as part of a telehealth/telemedicine service delivery method.

Waive quantity limits for DME, medical supplies, and pharmacy:

The State of Michigan is requesting to waive quantity limits.

Options for the Use of NF Beds:

The State of Michigan is requesting that nursing facilities be allowed use any or all of the following options:

- Medicaid residents may be placed in a Medicare-certified bed without submitting a request for Medicaid bed certification.
- Nursing facilities with a non-available bed plan may use those beds without prior approval. The non-available bed plan will be negated effective the date any of the non-available beds were used.
- Resident rooms that were converted for other purposes can be re-converted to resident use.
- A single room can be converted to a semi-private room if it is large enough to allow for proper care procedures.
- If a facility determines that the most effective way to control the spread of the virus is to group residents who test positive or isolate residents, the facility may move residents independent of the distinct part requirements.

Hospital Transfers and Non-Emergency Ambulance Transports:

- The State of Michigan is requesting that hospitals be allowed to transfer beneficiaries to lower acuity facilities in an effort to free hospital resources for incoming COVID-19 cases. Hospitals wishing to initiate a transfer to another facility must continue to obtain a Prior Authorization.
- The State of Michigan is requesting that interfacility hospital transfers to lower acuity facilities via ambulance transports be allowed in an effort to free hospital resources for incoming COVID-19 cases.

Suspending Scope of Practice Laws, Allowing Qualified Physician Assistants, Nurses to Treat COVID-19 patients:

The State of Michigan is requesting that scope of practice, supervision, and delegation, be temporarily suspended, in whole or part, to the extent necessary to allow licensed, registered, or certified health care professionals to provide, within a designated health care facility at which the professional is employed or contracted to work, medical services that are necessary to support the facility's response to the COVID-19 pandemic and are appropriate to the professional's education, training, and experience, as determined by the facility in consultation with the facility's medical leadership.

Provision of Services in Alternative Settings

The State of Michigan is requesting authority to fully reimburse facilities for services rendered in an alternative setting, including an unlicensed facility, due to the public health emergency.

Person Centered Services Plans

The State of Michigan would like to extend pre-existing person-centered services plans and their amendments through the termination of the emergency declaration.

State Plan Amendment and Waiver Flexibilities: Submission Deadline, Public Notice, and Tribal Consultation:

- The State of Michigan is requesting a modification of the requirement to submit SPAs related to the COVID-19 emergency by March 31, 2020, to obtain a SPA effective date during the first calendar quarter of 2020, pursuant to 42 C.F.R. §430.20.
- The State of Michigan is also requesting a waiver of public notice requirements applicable to the state plan amendment (SPA) and waiver submission process.
- The State of Michigan is also requesting flexibility 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 or waiver.

These emergency relief efforts also apply to the Children's Health Insurance Program (CHIP) to the extent applicable.

These emergency relief efforts apply to both fee for service and managed care.