

SECTION 1135 WAIVER

April 2020

Overview

In response to the COVID-19 pandemic, the Wisconsin Department of Health Services (DHS) submitted an initial Section 1135 Waiver application, which was approved by the Centers for Medicare & Medicaid Services (CMS) on April 20, 2020. A second 1135 application was submitted and subsequently approved on June 5, 2020. 1135 Waivers temporarily modify or suspend federal regulations that impede the state's ability to respond to or recover from an emergency. In addition to the state's 1135 Waiver submissions, CMS has released a number of [blanket 1135 Waivers](#), which automatically waive certain CMS regulations nationwide. Many of the requests included in Wisconsin's Section 1135 Waivers were subsequently included in the CMS blanket 1135 Waivers.

Key changes approved in [Wisconsin's 1135 Waiver submissions](#) are attached and are effective through the end of the United States [Department of Health and Human Services-declared public health emergency](#).

1135 Waiver Flexibilities Granted

- Allows providers to receive payments for services provided in alternative settings to members affected by 2019 novel coronavirus
- Temporarily waives provider enrollment requirements for 90 days, such as application fees and site visits
- Requires managed care organizations to extend preexisting service authorizations until the termination of the Health and Human Services Secretary's declared public health emergency
- Temporarily allows 1915(c) waiver services to be provided in settings that have not been determined to meet the home and community-based settings criteria
- Temporarily waives the written consent requirements under 42 C.F.R. §441.301(c)(2)(ix) for 1915(c) waiver programs, and allows documented verbal consent as an alternative

Additional Information

The 1135 Waiver approval allows for much-needed flexibilities for the Wisconsin DHS, providers, and health systems, and is an important piece of DHS's response to the COVID-19 pandemic. In addition to the 1135 Waiver, DHS has identified and requested additional programmatic flexibilities, including the submission of multiple 1915(c) Appendix K applications and multiple Medicaid Disaster Relief State Plan Amendments. The key changes listed in this document are not an exhaustive list of the flexibilities available to program stakeholders, and additional flexibilities may be available under state or other federal authorities.

Please note that requests that were included in the original 1135 Waiver submission may have been rejected by CMS or resubmitted as 1915(c) Appendix K or Medicaid Disaster Relief State Plan Amendment requests under



CMS guidance. Furthermore, there may be requests that were approved by CMS but not implemented due to either insufficient current resources to support implementation or a DHS determination that they are not necessary at this time.

Questions regarding the 1135 Waiver submission or other flexibilities identified by DHS can be sent to the DHSDMSCOVID19@dhs.wisconsin.gov inbox with the subject line **1135 Waiver Flexibilities**.

Tony Evers
Governor



DIVISION OF MEDICAID SERVICES

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Andrea Palm
Secretary

State of Wisconsin
Department of Health Services

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April 16, 2020

Jackie Glaze
CMS Acting Director,
Medicaid and CHIP Operations Group Center for Medicaid and CHIP Services
61 Forsythe St SW Suite 4T20
Atlanta, GA 30303-8909

Via email transmittal to Jackie.Glaze@cms.hhs.gov

Dear Ms. Glaze,

On January 31, 2020, in anticipation of the effects of Novel Coronavirus Disease (COVID-19), Secretary of Health and Human Services Alex Azar declared a public health emergency pursuant to Section 319 of the Public Health Services Act. Secretary Azar's declarations were retroactively effective to January 27, 2020. On March 13, 2020, as authorized under Title V of the Stafford Act, President Donald J. Trump declared a national emergency in response to the effects of the 2019-nCoV. On March 13, 2020, Secretary Azar issued his formal waiver approval authority under Section 1135.

The Wisconsin Department of Health Services (DHS) writes to request approval for the detailed flexibilities listed below under Section 1135 of the Social Security Act (42 U.S.C. § 1320b-5) as related to the COVID-19 Disease. The list represents Wisconsin's initial requested flexibilities under the Section 1135 authority in connection to the COVID-19 outbreak and emergency. Because circumstances surrounding the COVID-19 emergency remain quite fluid, DHS may subsequently request approval for additional flexibilities. DHS remains committed to submitting any additional request promptly as the Department identifies flexibilities needed to meet the COVID-19 emergency in Wisconsin.

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 note that Wisconsin is implementing all of the blanket waivers issued by CMS in Medicaid and CHIP, to the extent applicable. In addition, Wisconsin expects its licensed providers will operate under all CMS blanket waivers announced by CMS. The purpose of this letter is to seek additional waivers as authorized by Section 1135 for CMS approval. Consistent with Section 1 of the President's March 13, 2020, national emergency declaration, DHS requests a retroactive effective date of March 1, 2020.

Wisconsin DHS is requesting that DHHS grant temporary authority to:

1. Allow providers to receive payments for services provided in alternative settings to recipients affected by 2019 novel coronavirus.
2. Waive preadmission screening and annual resident review requirements when recipients are transferred.
3. Allow hospitals who hold a state license but have not yet received accreditation from the Joint Commission to bill the Medical Assistance program during the 2019 novel coronavirus public health emergency.
4. Waive payment of the application fee to temporarily enroll a provider for 90 days or until the termination of the 2019 novel coronavirus public health emergency, whichever is longer.
5. Waive pre-enrollment criminal background checks for providers that are enrolled in the Medicare program to temporarily enroll the provider in the Medical Assistance program for 90 days or until the termination of the 2019 novel coronavirus public health emergency, whichever is longer.
6. Waive site visit requirements to temporarily enroll a provider for 90 days or until the termination of 2019 novel coronavirus public health emergency, whichever is longer.
7. Cease revalidation of providers who are enrolled in the Medical Assistance program or otherwise directly impacted by the 2019 novel coronavirus public health emergency for 90 days or until termination of the public health emergency, whichever is longer.
8. Waive the requirement that physicians and other health care professionals be licensed in the state in which they are providing services if they have equivalent licensing in another state or are enrolled in the federal Medicare program.
9. Waive prior authorization requirements for access to covered state plan or waiver benefits.
10. Expand the authority under Section 1905 (a) of the federal Social Security Act regarding nonemergency transportation to allow for reimbursement of any eligible individual under the Medical Assistance program, additional vendors, transportation for caregivers going to provide services to recipients, and meal delivery to Medical Assistance recipients.
11. Waive public notice requirements that would otherwise be applicable to state plan and waiver changes.
12. Modify the tribal consultation timelines specified in the Medical Assistance state plan to allow for consultation at the next future tribal health director meeting.
13. Modify the requirement under 42 CFR 430.20 to submit the state plan amendment by March 31, 2020, to obtain an effective date during the first calendar quarter of 2020.

14. Simplify program administration by allowing for temporary state plan flexibilities rather than requiring states to go through the state plan amendment submission and approval process.
15. Waive timely filing requirements for billing under 42 USC 1395cc and 1396a (a) (54) and 42 CFR 424.44 to allow time for providers to implement changes.
16. Expand hospital presumptive eligibility to include the population over age 65 and disabled.
17. Allow flexibility for submission of electronic signatures on behalf of a Medical Assistance recipient by application assistants if a signature cannot be captured in person.
18. Waive requirements for managed care organizations to complete initial and periodic recredentialing of network providers if the providers meet Medical Assistance provider enrollment requirements during the 2019 novel coronavirus public health emergency.
19. Require managed care organizations to extend preexisting authorizations through which a Medical Assistance recipient has received prior authorization until the termination of the 2019 novel coronavirus public health emergency.
20. Waive sanctions under Section 1877 (g) of the Social Security Act relating to limitations on physician referral.
21. Allow flexibility in how a teaching physician is present with the patient and resident including real-time audio and video or access through a window.
22. Waive certain equipment requirements in hospital equipment maintenance requirement guidance issued on December 20, 2013, to maintain the health and safety of the hospitals' patients and providers.
23. Create provisions allowing for additional flexibilities to allow for the use in nursing homes of physician extenders in place of medical directors and attending physicians and telehealth options.
24. Waive notice of transfers within a nursing home due to medically necessary protection from the 2019 novel coronavirus.
25. Waive requirements to document sufficient preparation and orientation to residents to ensure a safer and orderly intrafacility nursing home transfer.
26. Waive requirements for a nursing home bedhold policy.
27. Waive the requirements for nursing home in-service education under 42 CFR 483.35 (d) (7).
28. Waive nurse staffing information and posting of that information for nursing homes.
29. Suspend the requirement that a pharmacist go monthly to the nursing home to do record review.
30. Waive or lessening requirements for a paid feeding assistant program in nursing homes and setting guidelines for training to assist with the 2019 novel coronavirus pandemic.

31. Waive the annual and quarterly screening of fire extinguishers and any other annual maintenance review for nursing homes.
32. Allow all clinical hours required under 42 CFR 483.152 (a) (3) to be online simulation.
33. Waive under 42 CFR 483.151 (b) (2) the loss of the Nurse Aide Training and Competency Evaluation Program.
34. Waive the requirements under 42 CFR 483.160 for training of paid feeding assistants.
35. Allow home health agencies to perform certifications, initial assessments, and determine homebound status remotely or by record review.
36. Waive life safety codes for intermediate care facilities for individuals with intellectual disabilities under 42 CFR 483.70 and for hospitals, hospices, nursing homes, critical access hospitals and intermediate care facilities for individuals with intellectual disabilities relating to fire alarm system maintenance and testing, automatic sprinkler and standpipe system inspection, testing, and maintenance, and inspection and maintenance of portable fire extinguishers.

Thank you for the prompt consideration of Wisconsin's request.
Sincerely,

Jim Jones
Medicaid Director
Division of Medicaid Services
Wisconsin Department of Health Services

cc: Andrea Palm, WI DHS
Lisa Olson, WI DHS
Elizabeth Wikler, WI DHS
Sandra Rowe, WI DHS/OLC
Andrew Forsaith, WI DHS/OPIB
Jeanne Ayers, WI DHS/DPH
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June 3, 2020

Jackie Glaze
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61 Forsythe St SW Suite 4T20
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Via email transmittal to Jackie.Glaze@cms.hhs.gov

Dear Ms. Glaze:

On January 31, 2020, in anticipation of the effects of Novel Coronavirus Disease (COVID-19), Secretary of Health and Human Services Alex Azar declared a public health emergency pursuant to Section 319 of the Public Health Services Act. Secretary Azar's declarations were retroactively effective to January 27, 2020. On March 13, 2020, as authorized under Title V of the Stafford Act, President Donald J. Trump declared a national emergency in response to the effects of the 2019-nCoV. On March 13, 2020, Secretary Azar issued his formal waiver approval authority under Section 1135.

On April 20, 2020, CMS issued approval on a number of waivers and modifications to federal Medicaid, the Children's Health Insurance Program (CHIP), and Medicare requirements that posed issues or challenges for the health care delivery system in all counties in Wisconsin. The Wisconsin Department of Health Services (DHS) writes to request approval for additional flexibilities listed below under Section 1135 of the Social Security Act (42 U.S.C. § 1320b-5) as related to the COVID-19 Disease. The list represents Wisconsin's second request under the Section 1135 authority in connection to the COVID-19 outbreak and emergency, and includes request that were originally submitted as part of DHS's 1915(c) Appendix K submissions. Consistent with Section 1 of the President's March 13, 2020, national emergency declaration, DHS requests a retroactive effective date of March 1, 2020.

Please note that Wisconsin is implementing all of the blanket waivers issued by CMS on March 13, 2020 in Medicaid and CHIP, to the extent applicable. In addition, Wisconsin expects its licensed providers will operate under all CMS blanket waivers announced by CMS on March 13, 2020.

1. Home and Community Based Services: Waiver Requirements. Wisconsin DHS is requesting that DHHS grant temporary authority:

1.1 To waive requirements related to home and community-based settings on a case-by-case basis in order to ensure the health, safety, and welfare of affected beneficiaries (under 42 C.F.R. § 441.301(c)(4)).

1.2 To waive signature requirements for home and community-based services waiver program documents requiring informed consent in writing and permit informed consent verbally and through electronic means.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Jones", written over a circular stamp or seal.

Jim Jones
Medicaid Director