

Medicaid Program Response to COVID-19

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The Families First Coronavirus Response Act (FFCRA) and declaration of a Public Health Emergency (PHE) by the Secretary of Health and Human Services due to the Novel Coronavirus have each had a significant impact on the Medicaid program. The PHE gives the Secretary expanded opportunity to waive requirements of Title XIX of the Social Security Act at a rapid pace under section 1135. FFCRA increased the Federal Medical Assistance Percentage (FMAP) 6.2 percentage points across all states and territories who are eligible to receive the increase. Increased FMAP is available for claims paid from January 1, 2020 through and including the last day of the quarter when the PHE is lifted. Requirements for increased FMAP and a discussion of the 1135 waivers being requested by Medicaid programs and granted by the Secretary are discussed in greater detail below.

Increased FMAP

The FFCRA increased FMAP for Medicaid expenditures by 6.2% for “medical assistance expenditures” to Medicaid programs that comply with specific requirements including:

1. Maintenance of Effort: maintain eligibility requirements and methods in place as of January 1, 2020 such that no new substantive or procedural limitations are put on Medicaid eligibility.
2. Premium Cost Freeze: for Medicaid programs that charge premiums to Medicaid beneficiaries, no increase in premiums as of January 1, 2020. For programs that had increased premiums prior to January 1, 2020, they have 30 days to revoke such increases.
3. COVID-19 Protections: No out of pocket costs for COVID-19 tests, treatments or therapies.
4. Continuous Coverage: States must continue coverage for all individual enrolled as of March 18, 2020 including those beneficiaries who had coverage on that date as a result of an appeal. Individuals who had presumptive eligibility on March 18, 2020 who are later found to be ineligible are not included in the category of continuous coverage for increased FMAP. While programs may follow their typical redetermination schedules, they cannot terminate coverage until the end of the month when the PHE ends.

Increased FMAP is available only for medical assistance expenditures that are typically paid at a state specific rate. Other Federal Medicaid expenditures such as expansion Medicaid for adults without children, family planning services and expenditures for the administrative costs of a Medicaid program are unchanged.

Medicaid 1135 Waiver Summary

As of April 2, 2020, CMS has approved Medicaid waiver requests for 43 states and the District of Columbia. In the Medicaid context, Section 1135 waivers give Medicaid programs flexibility to administer them in a manner that allows health care providers who, as a result of a national emergency, are otherwise unable to strictly comply with certain federal Medicaid requirements.

In response to the COVID-19 pandemic, CMS developed a streamlined template to facilitate expedited application and approval of section 1135 Medicaid waivers. Common themes across approved 1135 Medicaid waivers include:

1. **Medicaid Prior Authorizations:** Allows for temporary suspension of Medicaid prior authorization requirements, and provides for an extension of pre-existing authorizations for which a beneficiary has previously received prior authorization.
2. **Long Term Services and Supports:** Allows for the suspension of Pre-Admission Screening and Annual Resident Review (PASRR) Level I and Level II Assessments for 30 days.
3. **Fair Hearings:** Allows for additional time for beneficiaries to request a fair hearing, allows managed care enrollees to proceed immediately to a state fair hearing without having a managed care plan resolve the appeal first, and allows the state to delay scheduling fair hearings and issuing fair hearing decisions
4. **Provider Enrollment:** Allows for reimbursement to out-of-state providers for multiple instances of care to multiple participants; waives certain requirements for temporary, provisional enrollment of providers who are not already enrolled with Medicare or another State Medicaid Agency; and temporarily pauses revalidation of providers located in the state, or who are otherwise directly impacted by the emergency.
5. **Provision of Service in Alternate Settings:** Allows certain facilities (e.g., NFs, ICFs, psychiatric residential treatment facilities, and hospital NFs) to be fully reimbursed for services rendered in an unlicensed setting.
6. **State Plan Amendment (SPA) Flexibilities:** Waives the deadline for SPA submission and public notice requirements for COVID-19-related SPAs that increase beneficiary access to care and do not negatively impact providers (including reductions in rates), and provides flexibility for tribal consultation.

Unless otherwise stated, 1135 Medicaid waivers have a retroactive effective date of March 1, 2020 and will end upon termination of the PHE, including any extensions. In some instances, a state has requested and been granted a waiver, but may not exercise the option afforded them by CMS depending on guidance from their Governor or availability of state funds. Copies of state specific approvals can be found on the Federal Disaster Resources section of the [Medicaid.gov](https://www.Medicaid.gov) website (link

[here](#)).

The attached [interactive map](#) provides additional information regarding individual states' 1135 waiver requests and approvals.

COVID-19 Public Health Emergency 1115(a) Waivers

In addition to approving Medicaid 1135 waivers, on March 22, 2020, CMS published a State Medicaid Director letter promoting PHE section 1115(a) demonstration opportunities. Section 1115(a) demonstrations make available a number of additional authorities and flexibilities to assist states in enrolling and serving beneficiaries in Medicaid and focus state operations on addressing the COVID-19 pandemic. In light of the emergency circumstances, CMS has noted that the Department will not (1) require States to submit budget neutrality calculations for demonstrations designed to combat and respond to the spread of COVID-19, or (2) conduct a public notice and input process. CMS will expedite the review and approval process for all COVID-19 section 1115 demonstrations. The department provided a template ([here](#)) that states may use to request a section 1115 demonstration project.

Home and Community Based Services 1915(c) Waivers

Medicaid programs serving beneficiaries with Home and Community Based Services (HCBS) under section 1915(c) waivers are encouraged to apply for additional administrative flexibility through Appendix K applications. The Appendix K process gives Medicaid programs the opportunity to accelerate applications and approvals focused on HCBS. As of April 2, 2020, 15 states had been approved for HCBS changes in response to COVID-19. Specific details can be found here [CMS Appendix K Home Page](#).

For more information on your state's approved 1135 waiver, 1115 demonstration application, or enhanced HCBS flexibility, contact your Polsinelli attorney.

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National Law Review, Volume X, Number 98

Source URL: <https://natlawreview.com/article/medicaid-program-response-to-covid-19>