

CMS Partial Approval of California's 1135 Waiver Requests

On March 23, 2020, the Department of Health Care Services (DHCS) notified managed care plans (MCPs), like CalOptima, that the Centers for Medicare and Medicaid Services (CMS) has partially approved Section 1135 flexibilities as requested by DHCS on March 16th and March 19th. The approval letter is located on the DHCS website <https://www.dhcs.ca.gov/Documents/COVID-19/CA-1135-Flexibilities-Approval-Letter-Rev-032320.pdf>.

DHCS had requested CMS' review and approval of various Section 1135 waiver requests due to potential issues or challenges with meeting Medicaid and Medicare requirements in the healthcare delivery system in all California counties due to COVID-19.

The approved Medicaid provisions include the following:

- **Temporarily suspend Medicaid fee-for-service (FFS) prior authorization requirements**
 - CMS approved California's request to waive or modify the state plan prior authorization requirements and processes for benefits administered through the FFS delivery system.
- **Extend pre-existing authorizations which a member has previously received prior authorization through the end of the public health emergency**
 - CMS interprets prior authorization requirements to be a type of pre-approval requirement for which waiver and modification authority under Section 1135(b)(1)(C) of the Act is available.
- **State Fair Hearing Requests and Appeal Timelines**
 - CMS approved a waiver under Section 1135 that allows members to have more than 90 days, up to an additional 120 days for an eligibility of FFS appeal to request a State Fair Hearing (SFH).
 - CMS was able to modify the federal timeframes associated with appeals and SFHs; therefore, CMS approves the following through the end of the public health emergency:
 - ◆ Modification of the timeframe for managed care entities to resolve appeals before a member may request a SFH to **no less than one day** in accordance with the requirements outlined in the approval letter. This allows MCP members to proceed almost immediately to SFH without having an MCP resolve the appeal first by permitting the state to modify the timelines for MCPs to resolve appeals to one day so the impacted appeals satisfy the exhaustion requirements.
 - ◆ Section 1135 of the Act allows CMS to authorize a modification to the timeframes for required activities under Section 1135(b)(5) of the Act. **CMS authorizes the state to modify the timeline for MCPs to resolve appeals to no less than one day.** If the state uses this authority, it means that all appeals filed between March 1, 2020 and the end of the public health emergency are deemed to satisfy the exhaustion requirement after one day (or more if that is the timeline elected by the state) and allow members to file an appeal to the SFH level.

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PROVIDER ALERT

CMS 1135 Waiver Requests: Page 2 of 2

- ◆ Modification of the timeframe under Title 42 CFR, Section 438.408 for members to exercise their appeal rights to allow an **additional 120 days to request a SFH** when the initial 120th day deadline for a member occurred during the period of this Section 1135 waiver.
- ◆ Additionally, CMS approved a modification of the timeframe, under Title 42, CFR, Section 438.408 for MCP members to exercise their appeal rights. Specifically, any MCP member for whom the 120-day deadline described in Title 42, CFR, Section 438.408 would have occurred between March 1, 2020 through the end of the public health emergency, are **allowed up to an additional 120 days to request a SFH**.

- **Provider Enrollment**

- California is authorized to provisionally and temporarily enroll providers who are enrolled with another State Medicaid Agency (SMA) or Medicare for the duration of the public health emergency.
- Under current CMS policy, as outlined in the Medicaid Provider Enrollment Compendium, California may reimburse otherwise payable claims from out-of-state providers not enrolled in the California Medicaid program if criteria outlined in the approval letter are met.
- For the duration of the public health emergency, California may reimburse out-of-state providers for multiple instances of care to multiple participants, as long the criteria outlined in the approval letter are met.
- If a certified provider is enrolled in Medicare or with a state Medicaid program other than California, California may provisionally and temporarily enroll the out-of-state provider for the duration of the public health emergency to accommodate participants displaced by the emergency.
- In regards to providers not already enrolled with another SMA or Medicare, CMS will waive the screening requirements under Section 1135(b)(1) and (b)(2) of the Act, so the state may provisionally and temporarily enroll the providers for the duration of the public health emergency as long as the state meet the minimum requirements.
- CMS also approved California's request to temporarily cease revalidation of providers who are located in California or are otherwise directly impacted by the emergency.

- **Provision of Services in Alternative Settings**

- Allows facilities, including Nursing Facilities (NFs), intermediate care facilities for individuals with intellectual and developmental disabilities (ICF/DD), psychiatric residential treatment facilities (PRTFs), and hospital NFs to be fully reimbursed for services rendered to an unlicensed facility (during an emergency evacuation or due to other need to relocate residents where the placing facility continues to render services) provided that the State makes reasonable assessment that the facility meets minimum standards, consistent with reasonable expectations in the context of the current public health emergency, to ensure the health, safety and comfort of members and staff.

- **Duration of Approved Waivers**

- The waiver is effective as of March 1, 2020 and will terminate upon termination of the public health emergency, including any extensions.

CMS continues to work on the additional waiver or modification requests that are not currently reflected in the approval. For waiver or modification requests that require approval under authority other the Section 1135, such as under applicable regulations, through an a Section 1115 demonstration, CMS will continue to review and make determinations as soon as possible.