

Section 1135 Waiver Issues and COVID-19



(March 25, 2020): On January 31, 2020, Secretary Alex Azar, of the US Department of Health & Human Services (HHS), used his authority under the Public Health Service Act to declare a public health emergency in the United States.^[1] Secretary Azar determined that a public health emergency had existed nationwide since January 27, 2020. Subsequently, President Trump declared a National Emergency^[2] on March 13, 2020 related to the current COVID-19 outbreak. When the HHS Secretary has declared a public health emergency and the President of the United States has declared a disaster or emergency under the Stafford Act or National Emergencies Act, the HHS Secretary is authorized to grant certain waivers or modifications in order to address the outbreak (*referred to as a Section 1135 Waiver*). Due to these two declarations, Secretary Azar has now been granted the power to waive certain Federal requirements in Medicare, Medicaid and the Children's Health Insurance Program (CHIP) to ensure that sufficient health care items and services are available to meet the needs of enrolled individuals. This authority was granted March 15, 2020 with a retroactive effective date of March 1, 2020.

I. State Medicaid Agencies Must Request a Section 1135 Waiver:

CMS has the authority to grant state and territorial Medicaid agencies a wider range of flexibilities under Section 1135 waivers. However, a Section 1135 Waiver is not automatically granted. Each state or territory must assess their individual needs and file a request with CMS for specific waivers. In March 2020, CMS created an 1135 Medicaid & CHIP Checklist to assist states during emergencies.^[3] This checklist includes some of the temporary flexibilities available to CMS. For example, the following Medicaid Authorizations can be requested:

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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

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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

These are examples of the types of flexibilities that a state / territory can request but is not all inclusive. The 1135 waiver authority only applies to Federal requirements and does not apply to any State requirements for licensure or conditions of participation.^[4] In addition, these waivers typically end no later than the termination of the emergency period, or 60 days from the date the waiver or modification is first published unless the Secretary extends the waiver by notice for additional periods of up to 60 days, up to the end of the emergency period.

CMS also has the authority to grant a “blanket” waiver or modification to a Medicare, Medicaid, or CHIP requirement. A blanket waiver is made when a determination has been made that all similarly situated providers in an emergency area need such a waiver or modification. A decision regarding a blanket waiver or modification is made based on the need and frequency of requests for specific waivers or modifications in response to the disaster or emergency.

As of March 24, 2020, CMS has issued the following guidance, directives and waivers, related to Medicaid and CHIP programs. We recommend providers carefully review the HHS, CMS, and / or CDC guidance specific to each service, discipline or facility type for complete details and keep in mind that due to the rapidly evolving nature of this public health emergency, guidance will need to be constantly updated.

II. Section 1135 Waiver Opportunities:

On March 22, 2020, CMS announced a new Section 1115 demonstration opportunity to aid states with addressing the public health emergency. The COVID-19, Section 1115 waiver demonstration opportunity is effective retroactively to March 1, 2020 and will allow states to select from a variety of options to deliver the most effective care to their beneficiaries in light of the COVID-19 public health emergency.^[5] This demonstration will allow states to extend home and community-based service (HCBS) flexibilities to beneficiaries receiving long-term supports and services (LTSS) or could be used by states to accept self-attestations of applicant resources to assist Medicaid agencies in making more streamlined eligibility determinations. Any section 1115 demonstrations approved pursuant to this opportunity are time limited and will expire no later than 60 days after the end of the public health emergency.

- **1915(c) Appendix K Template**

CMS developed Appendix K as a standalone appendix to be utilized by states during emergency situations to request amendments to approved 1915(c) waivers. Appendix K includes actions that

states may take under the existing Section 1915(c) home and community-based waiver authority in order to respond to an emergency. Appendix K may be completed retroactively as needed by the state. CMS has drafted a template and instructions to assist with the drafting of this appendix. As of this date, Pennsylvania, Washington, and West Virginia have applied for Appendix K waivers and received approvals from CMS.[\[6\]](#)

- **Medicaid Disaster State Plan Amendment Template**

Each Medicaid program has a state plan which describes the state's rules related to eligibility, benefits and payments. CMS created a Disaster State Plan Amendment (SPA) template to allow states to submit one combined request for all temporary changes that states may wish to make to their programs. CMS also released instructions to assist states in completing the SPA and in responding to the COVID-10 national emergency.[\[7\]](#)

III. Florida 1135 Waivers:

On March 13, 2020, Florida became the first state to file a request for a 1135 waiver to address the challenges posed by COVID-19. On March 16, 2020, CMS filed a response to Florida's 1135 waiver requests.[\[8\]](#) CMS granted a number of waiver requests to help Florida combat this emerging crisis.

- **Florida Provider Enrollment Changes:**

In general, a state Medicaid agency must enroll furnishing providers. However, Florida is not required to create a temporary provisional enrollment for providers who are enrolled with another state Medicaid agency or Medicare. Under current CMS policy, Florida may reimburse otherwise payable claims from an out-of-state provider not currently enrolled in Florida's Medicaid program if five criteria have been met.

- ***The item or service is furnished by an institutional provider, individual practitioner, or pharmacy at an out-of-state/territory practice location— i.e., located outside the geographical boundaries of the reimbursing state/territory's Medicaid plan,***
- ***The National Provider Identifier (NPI) of the furnishing provider is represented on the claim,***
- ***The furnishing provider is enrolled and in an "approved" status in Medicare or in another state/territory's Medicaid plan,***
- ***The claim represents services furnished, and;***
- ***The claim represents either: A single instance of care furnished over a 180-day period, OR Multiple instances of care furnished to a single participant, over a 180-day period***[\[9\]](#)

For the duration of the Section 1135 waiver, CMS has agreed to waive the fifth criteria listed above. Therefore, providers may furnish care to more than one beneficiary and may treat multiple instances of care over a 180-day period as long as the other four criteria have been met.

Florida has also been granted the ability to perform an expedited enrollment for an out-of-state facility for a certified provider who is enrolled in Medicare or with another state Medicaid program in order to accommodate participants who were displaced by the emergency.

For providers not currently enrolled with Medicare or a state Medicaid agency, CMS has agreed to waive four screening requirements to allow Florida to provisionally, temporarily enroll providers. Specifically, the following screening requirements may be waived:

1. ***Payment of the application fee - 42 C.F.R. 455.460.***
2. ***Criminal background checks associated with Fingerprint-based Criminal Background Checks - 42 C.F.R. 455.434.***
3. ***Site visits - 42 C.F.R. 455.432.***
4. ***In-state/territory licensure requirements - 42 C.F.R. 455.412.***

However, CMS is still requiring Florida to meet a number of minimum documentation requirements before enrolling providers to ensure the safety of patients. Finally, Florida may temporarily cease revalidation of providers who are located in Florida or who are directly impacted by the emergency. These provider enrollment emergency relief efforts also apply to CHIP.

- **Waiver of Service Prior Authorization (PA) Requirements:**

CMS has agreed to waive any prior authorization processes outlined in the State of Florida's state plan. This waiver applies to services provided on or after March 1, 2020 through the termination of the emergency declaration for beneficiaries with a permanent residence in the geographic area of the public health emergency.

- **Waiver for Pre-Admission Screening and Annual Resident Review (PASRR) Level I, Level II Assessments for 30 Days:**

For Medicaid-certified nursing facilities, Level 1 and Level 2 assessments have been waived for 30 days. All new admissions can be treated like exempted hospital discharges. After 30 days, any new admissions with mental illness or intellectual disability should receive a Resident Review as soon as resources become available.

- **Waiver to Allow Evacuating Facilities to Provide Services in Alternative Settings, such as a Temporary Shelter When a Provider's Facility is Inaccessible:**

Facilities such as nursing facilities, intermediate care facilities for individuals with intellectual and developmental disabilities, psychiatric residential treatment facilities, and hospitals nursing facilities are to be fully reimbursed for services rendered during an emergency evacuation to an unlicensed facility (where an evacuating facility continues to render services). After the initial 30 days, CMS would require that the unlicensed facility either seek licensure or the evacuating facility would need to seek new placement for the individuals.

- **State Fair Hearing Requests and Appeal Deadlines:**

CMS has granted Florida the authority to modify the timeframes associated with appeals and fair hearings. Specifically, CMS granted three modifications to the state fair hearing and decision-making process:

1. ***CMS has authorized the state to modify the timeframe for managed care plans to resolve appeals to zero days. If the state uses this authority, it would mean that all appeals filed between March 1, 2020 and June 29, 2020 are deemed to immediately satisfy the exhaustion requirement in 42 CFR 438.408(f)(1) and allow enrollees to proceed directly to the state fair hearing.***
2. ***Managed care enrollees have 120 days to exercise their appeal rights and file for a fair hearing under 42 CFR 438.408(f)(2). Any managed care enrollee for whom the 120 day deadline would have occurred between March 1, 2020 through June 29, 2020 is granted an extension to request a state fair hearing. An enrollee can be allowed up to an additional 120 days to make this request, however, all requests must be made no later than June 29, 2020.***
3. ***Modification of the timeframes in 42 CFR 431.221(d) to allow beneficiaries to have more than 90 days to request a state fair hearing for eligibility or fee-for-service issues.***

CMS also granted a number of flexibilities the state can utilize in operating their appeals and fair hearing process:

- ***The state may suspend adverse actions for individuals for whom the state has completed a determination but either: 1) has not yet sent the notice; or 2) who the state believes likely did not receive the notice.***
- ***The state may delay scheduling fair hearings and issuing fair hearing decisions.***
- ***The state may offer to continue benefits to individuals who are requesting a fair hearing if the request comes later than the date of the action.***

IV. Washington 1135 Waivers:

On March 15, 2020, Washington state submitted a request for a Section 1135 waiver to address the challenges posed by COVID-19. On March 19, 2020, CMS filed a response to Washington's 1135 waiver requests.^[10] CMS granted a number of waiver requests to help Washington combat this emerging crisis.

- **Provider Enrollment; Waiver of Service Prior Authorization (PA) Requirements; Waiver for Pre-Admission Screening and Annual Resident Review (PASRR) Level I, Level II Assessments for 30 Days; Waiver to Allow Evacuating Facilities to Provide Services in Alternative Settings, such as a Temporary Shelter When a Provider's Facility is Inaccessible; and State Fair Hearing Requests and Appeal Deadlines:**

The same 1135 waivers regarding provider enrollment, waiver of service prior authorization (PA) requirements; waiver for pre-admission screening and annual resident review (PASRR) Level I, Level II Assessments for 30 Days; waiver to allow evacuating facilities to provide services in alternative settings, such as a temporary shelter when a provider's facility is inaccessible; and state fair hearing requests and appeal deadlines were granted to Washington as were previously granted in Florida (see above).

In addition, Washington state requested a waiver of Drug Enforcement Administration's (DEA) requirements around medications. However, CMS stated that it was unable to waive relief from the DEA requirements. However, CMS stated that it would consult with DEA to determine if these requirements could be waived during the public health emergency.

- **Public Notice and Tribal Consultation:**

CMS has also granted Washington a partial waiver of public notice. For public notice for state plan amendments (SPAs) that only provide or increase beneficiary access to items and services related to COVID-19 (such as cost sharing waivers, payment rate increase, or amendments to ABPs adding services or providers) and would not be a restriction or limitation on payment or services or otherwise burden beneficiaries and providers, and that are temporary, with a specified sunset date related to COVID-19, CMS approves the state's request to waive public notice requirements. However, CMS has encouraged Washington to make all relevant information available to the public. Similarly, the state has flexibility in modifying their tribal consultation timeframe, including shortening the number of days before submission or conducting consultation after submission of the SPA.

V. Alabama 1135 Waivers:

On March 18, 2020, Alabama submitted a request for a Section 1135 waiver to address the challenges posed by COVID-19. On March 23, 2020, CMS filed a response to Alabama's 1135 waiver requests.^[11] CMS granted a waiver to help Alabama to combat this emerging crisis.

- **Waiver for Pre-Admission Screening and Annual Resident Review (PASRR) Level I, Level II Assessments for 30 Days:**

The same Section 1135 waiver regarding pre-admission screening and annual resident review (PASRR) Level I, Level II Assessments for 30 Days was granted to Alabama as was previously granted in Florida (see above).

VI. Arizona 1135 Waivers:

On March 17, 2020, Arizona submitted a request for a Section 1135 waiver to address the challenges posed by COVID-19. On March 23, 2020, CMS filed a response to Arizona's 1135 waiver requests.[\[12\]](#) CMS granted a number of waiver requests to help Arizona combat this emerging crisis.

- **Provider Enrollment and Waiver for Pre-Admission Screening and Annual Resident Review (PASRR) Level I, Level II Assessments for 30 Days:**

The same 1135 waivers regarding provider enrollment and waiver for pre-admission screening and annual resident review (PASRR) Level I, Level II Assessments for 30 Days were granted to Arizona as were previously granted in Florida (see above).

- **Temporarily Suspend Medicaid Fee-for-Service Prior Authorization Requirements and Extend Pre-Existing Authorizations for which a Beneficiary has Previously Received Prior Authorization Through the End of the Public Health Emergency:**

CMS has also granted Arizona the ability to suspend prior authorization requirements and permitted 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.

VII. California 1135 Waivers:

On March 16, 2020 and March 19, 2020, California submitted a request for a 1135 waiver to address the challenges posed by COVID-19. On March 23, 2020, CMS filed a response to California's Section 1135 waiver requests.[\[13\]](#) CMS granted a number of waiver requests to help California combat this emerging crisis.

- **Provider Enrollment:**

The same 1135 waivers regarding provider enrollment were granted to California as were previously granted in Florida (see above).

- **Temporarily Suspend Medicaid Fee-for-Service Prior Authorization Requirements and Extend Pre-Existing Authorizations for which a Beneficiary has Previously Received Prior Authorization Through the End of the Public Health Emergency:**

CMS has also granted California the ability to suspend, waive, or modify prior authorization requirements.

- **State Fair Hearing Requests and Appeal Deadlines:**

CMS has granted California the authority to modify the timeframes associated with appeals and fair hearings. Specifically, CMS granted three modifications to the state fair hearing and decision-making process:

1. ***CMS has authorized the state to modify the timeframe for managed care plans to resolve appeals to no less than one day. If the state uses this authority, it would mean that all appeals filed between March 1, 2020 and the end of the public health emergency are deemed to satisfy the exhaustion requirement in 42 CFR 438.408(f)(1) after one day (or more if that is the timeline elected by the state) and allow enrollees to file an appeal to the state fair hearing level.***
2. ***Managed care enrollees have 120 days to exercise their appeal rights and file for a fair hearing under 42 CFR 438.408(f)(2). Any managed care enrollee for whom the 120-day deadline would have occurred between March 1, 2020 through the end of the public health emergency, are granted an extension to request a state fair hearing. An enrollee can be allowed up to an additional 120 days to make this request.***
3. ***Modification of the timeframes in 42 CFR 431.221(d) to allow beneficiaries to have more than 90 days, up to an additional 120 days to request a fair hearing for an eligibility or fee for service appeal.***

- **Provision of Services in Alternative Settings:**

Facilities such as nursing facilities, intermediate care facilities for individuals with intellectual and developmental disabilities, psychiatric residential treatment facilities, and hospitals nursing facilities are to be fully reimbursed for services rendered to an unlicensed facility provided that the State makes a 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 beneficiaries and staff. This arrangement would be effective for the duration of the Section 1135 waiver.

VIII. Illinois 1135 Waivers:

On March 19, 2020, Illinois submitted a request for a Section 1135 waiver to address the challenges posed by COVID-19. On March 23, 2020, CMS filed a response to Illinois' 1135 waiver

requests.[\[14\]](#) CMS granted a number of waiver requests to help Illinois combat this emerging crisis.

- **Provider Enrollment and Suspend Pre-Admission Screening and Annual Resident Review (PASRR) Level I, Level II Assessments for 30 Days:**

The same Section 1135 waivers regarding provider enrollment and pre-admission screening and annual resident review (PASRR) Level I, Level II Assessments were granted to Illinois as were previously granted in Florida (see above).

- **Temporarily Suspend Medicaid Fee-for-Service Prior Authorization Requirements and Extend Pre-Existing Authorizations for which a Beneficiary has Previously Received Prior Authorization Through the End of the Public Health Emergency:**

CMS has also granted Illinois the ability to suspend prior authorization requirements and permitted 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.

- **State Fair Hearing Requests and Appeal Timelines and the Provision of Services in Alternative Settings:**

The same Section 1135 waivers regarding the state fair hearing requests and appeal timelines and the provision of services in alternative settings were granted to Illinois as were previously granted in California (see above).

IX. Louisiana 1135 Waivers:

On March 17, 2020, Louisiana submitted a request for a Section 1135 waiver to address the challenges posed by COVID-19. On March 23, 2020, CMS filed a response to Louisiana's 1135 waiver requests.[\[15\]](#) CMS granted a number of waiver requests to help Louisiana combat this emerging crisis.

- **Provider Enrollment and Suspend Pre-Admission Screening and Annual Resident Review (PASRR) Level I, Level II Assessments for 30 Days:**

The same 1135 waivers regarding provider enrollment and waiver for pre-admission screening and annual resident review (PASRR) Level I, Level II Assessments were granted to Louisiana as were previously granted in Florida (see above).

- **State Fair Hearing Requests and Appeal Timelines and the Provision of Services in Alternative Settings:**

The same 1135 waivers regarding the state fair hearing requests and appeal timelines and the provision of services in alternative settings were granted to Louisiana as were previously granted in California (see above).

X. Mississippi 1135 Waiver Issues:

On March 18, 2020, Mississippi submitted a request for a Section 1135 waiver to address the challenges posed by COVID-19. On March 23, 2020, CMS filed a response to Mississippi's 1135 waiver requests.[\[16\]](#) CMS granted a number of waiver requests to help Mississippi combat this emerging crisis.

- **Provider Enrollment and Suspend Pre-Admission Screening and Annual Resident Review (PASRR) Level I, Level II Assessments for 30 Days:**

The same 1135 waivers regarding provider enrollment and waiver for pre-admission screening and annual resident review (PASRR) Level I, Level II Assessments were granted to Mississippi as were previously granted in Florida (see above).

- **Temporarily Suspend Medicaid Fee-for-Service Prior Authorization Requirements and Extend Pre-Existing Authorizations for which a Beneficiary has Previously Received Prior Authorization Through the End of the Public Health Emergency:**

CMS has also granted Mississippi the ability to suspend prior authorization requirements and permitted 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.

- **State Fair Hearing Requests and Appeal Timelines and the Provision of Services in Alternative Settings:**

The same 1135 waivers regarding the state fair hearing requests and appeal timelines and the provision of services in alternative settings were granted to Mississippi as were previously granted in California (see above).

XI. New Hampshire 1135 Waivers:

On March 18, 2020, New Hampshire submitted a request for a Section 1135 waiver to address the challenges posed by COVID-19. On March 23, 2020, CMS filed a response to New Hampshire's 1135 waiver requests.[\[17\]](#) CMS granted a number of waiver requests to help New Hampshire combat this emerging crisis.

- **Provider Enrollment and Suspend Pre-Admission Screening and Annual Resident**

Review (PASRR) Level I, Level II Assessments for 30 Days:

The same 1135 waivers regarding provider enrollment and waiver for pre-admission screening and annual resident review (PASRR) Level I, Level II Assessments were granted to New Hampshire as were previously granted in Florida (see above). However, New Hampshire was not granted the ability to temporarily cease revalidation of providers.

- **Temporarily Suspend Medicaid Fee-for-Service Prior Authorization Requirements and Extend Pre-Existing Authorizations for which a Beneficiary has Previously Received Prior Authorization Through the End of the Public Health Emergency:**

CMS has also granted New Hampshire the ability to suspend prior authorization requirements and permitted 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.

- **State Fair Hearing Requests and Appeal Timelines and the Provision of Services in Alternative Settings:**

The same 1135 waivers regarding the state fair hearing requests and appeal timelines and the provision of services in alternative settings were granted to New Hampshire as were previously granted in California (see above).

XII. New Mexico 1135 Waivers:

On March 19, 2020, New Mexico submitted a request for a Section 1135 waiver to address the challenges posed by COVID-19. On March 23, 2020, CMS filed a response to New Mexico's 1135 waiver requests.^[18] CMS granted a number of waiver requests to help New Mexico combat this emerging crisis.

- **Provider Enrollment and Suspend Pre-Admission Screening and Annual Resident Review (PASRR) Level I, Level II Assessments for 30 Days:**

The same 1135 waivers regarding provider enrollment and waiver for pre-admission screening and annual resident review (PASRR) Level I, Level II Assessments were granted to New Mexico as were previously granted in Florida (see above).

- **Temporarily Suspend Medicaid Fee-for-Service Prior Authorization Requirements and Extend Pre-Existing Authorizations for which a Beneficiary has Previously Received Prior Authorization Through the End of the Public Health Emergency:**

CMS has also granted New Mexico the ability to suspend prior authorization requirements and

permitted 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.

- **State Fair Hearing Requests and Appeal Timelines:**

The same 1135 waivers regarding the state fair hearing requests and appeal timelines were granted to New Mexico as were previously granted in California (see above).

XIII. New Jersey 1135 Waivers:

On March 20, 2020, New Jersey submitted a request for a Section 1135 waiver to address the challenges posed by COVID-19. On March 23, 2020, CMS filed a response to New Jersey's 1135 waiver requests.^[19] CMS granted a number of waiver requests to help New Jersey combat this emerging crisis.

- **Provider Enrollment and Suspend Pre-Admission Screening and Annual Resident Review (PASRR) Level I, Level II Assessments for 30 Days:**

The same 1135 waivers regarding provider enrollment and waiver for pre-admission screening and annual resident review (PASRR) Level I, Level II Assessments were granted to New Jersey as were previously granted in Florida (see above).

- **Temporarily Suspend Medicaid Fee-for-Service Prior Authorization Requirements and Extend Pre-Existing Authorizations for which a Beneficiary has Previously Received Prior Authorization Through the End of the Public Health Emergency:**

CMS has also granted New Jersey the ability to suspend prior authorization requirements and permitted 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.

- **State Fair Hearing Requests and Appeal Timelines and the Provision of Services in Alternative Settings:**

The same 1135 waivers regarding the state fair hearing requests and appeal timelines and the provision of services in alternative settings were granted to New Jersey as were previously granted in California (see above).

XIV. North Carolina 1135 Waiver:

On March 17, 2020, North Carolina submitted a request for a Section 1135 waiver to address the

challenges posed by COVID-19. On March 23, 2020, CMS filed a response to North Carolina's 1135 waiver requests.^[20] CMS granted a number of waiver requests to help North Carolina combat this emerging crisis.

- **Provider Enrollment and Suspend Pre-Admission Screening and Annual Resident Review (PASRR) Level I, Level II Assessments for 30 Days:**

The same 1135 waivers regarding provider enrollment and waiver for pre-admission screening and annual resident review (PASRR) Level I, Level II Assessments were granted to North Carolina as were previously granted in Florida (see above).

- **Temporarily Suspend Medicaid Fee-for-Service Prior Authorization Requirements:**

CMS has also granted North Carolina the ability to suspend prior authorization requirements.

- **State Fair Hearing Requests and Appeal Timelines and the Provision of Services in Alternative Settings:**

The same 1135 waivers regarding the state fair hearing requests and appeal timelines and the provision of services in alternative settings were granted to North Carolina as were previously granted in California (see above).

XV. Virginia 1135 Waivers:

On March 16, 2020, Virginia submitted a request for a Section 1135 waiver to address the challenges posed by COVID-19. On March 23, 2020, CMS filed a response to Virginia's 1135 waiver requests.^[21] CMS granted a number of waiver requests to help Virginia combat this emerging crisis.

- **Temporarily Suspend Medicaid Fee-for-Service Prior Authorization Requirements and Extend Pre-Existing Authorizations for which a Beneficiary has Previously Received Prior Authorization Through the End of the Public Health Emergency:**

CMS has granted Virginia the ability to suspend prior authorization requirements and permitted 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.

- **State Fair Hearing Requests and Appeal Timelines:**

The same 1135 waivers regarding the state fair hearing requests and appeal timelines were granted to Virginia as were previously granted in California (see above).

XVI. Conclusion:

CMS has reiterated their commitment to continue to expeditiously review and approve as appropriate all Section 1135 waivers and other requests received by the agency to provide states with the maximum amount of flexibility possible to care for their Medicaid beneficiaries during this public health emergency. This commitment has been demonstrated by the quick review and approval of multiple 1135 waiver requests. As additional Section 1135 waivers are approved by CMS, they will be posted on the CMS and Medicaid.gov website.^[22] It is expected that additional 1135 waivers will be requested in the coming days / weeks.

Liles Parker attorneys and staff are closely monitoring HHS, CMS and CDC guidance and will update this article as new information becomes available. For an overview on additional CMS initiatives to assist health care providers, you may wish to review our [article](#) dated March 27, 2020, titled **"Coronavirus Update -- New FAQs and Toolkits for Telehealth, Telemedicine & Medicare Provider Enrollment."** Please contact us with questions or for assistance with your response to this unprecedented National Emergency.



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^[1] Determination that a Public Health Emergency Exists, issued by Secretary Azar on January 31, 2020. A link to the determination can be found [here](#).

^[2] Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, Issued on March 13, 2020. A link to the declaration can be found [here](#).

^[3] Access to the 1135 Medicaid & CHIP Checklist can be accessed [here](#).

^[4] CMS guidance regarding the 1135 waivers can be accessed [here](#).

^[5] Information regarding the COVID-19: 1115 Waiver Demonstrations including an application template can be accessed [here](#).

[6] Information regarding Appendix K including the templates, instructions, and CMS approval letters can be accessed [here](#).

[7] Information regarding the Medicaid State Plan Disaster Relief SPA including the template and instructions can be accessed [here](#).

[8] A copy of CMS' response to Florida's request for 1135 flexibilities can be accessed [here](#).

[9] Medicaid Provider Enrollment Compendium can be accessed [here](#).

[10] A copy of CMS' response to Washington's request for 1135 flexibilities can be accessed [here](#).

[11] A copy of CMS' response to Alabama's request for 1135 flexibilities can be accessed [here](#).

[12] A copy of CMS' response to Arizona's request for 1135 flexibilities can be accessed [here](#).

[13] A copy of CMS' response to California's request for 1135 flexibilities can be accessed [here](#).

[14] A copy of CMS' response to Illinois' request for 1135 flexibilities can be accessed [here](#).

[15] A copy of CMS' response to Louisiana's request for 1135 flexibilities can be accessed [here](#).

[16] A copy of CMS' response to Mississippi's request for 1135 flexibilities can be accessed [here](#).

[17] A copy of CMS' response to New Hampshire's request for 1135 flexibilities can be accessed [here](#).

[18] A copy of CMS' response to New Mexico's request for 1135 flexibilities can be accessed [here](#).

[19] A copy of CMS' response to Florida's request for 1135 flexibilities can be accessed [here](#).

[20] A copy of CMS' response to North Carolina request for 1135 flexibilities can be accessed [here](#).

[21] A copy of CMS' response to Virginia's request for 1135 flexibilities can be accessed [here](#).

[22] Access to all CMS 1135 approval letters can be accessed [here](#).