

## COVID-19 Updates

**To:** State Medicaid, Aging, and Disability Directors

**From:** Damon Terzaghi, Senior Director, Advancing States

**Re:** CMS Releases Tools for State Medicaid Agencies to Address COVID-19

**Date:** March 22, 2020

### **Background**

Today, CMS released a set of tools to assist states as they request flexibility in order to address the COVID-19 pandemic. There are four distinct items within the CMS release, including:

- A checklist for 1135 waiver applications: <https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/cms-1135-waivers/index.html>;
- A checklist for 1115 waiver submissions: <https://www.medicaid.gov/medicaid/section-1115-demonstrations/1115-application-process/index.html>;
- A template for State Plan Amendment (SPA) submissions: <https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/state-plan-flexibilities/index.html>; and
- A COVID-specific template for 1915(c) Appendix K [disaster relief] applications: <https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/hcbs/appendix-k/index.html>.

**CMS does not expect states that have already submitted one or more of these applications/requests to resubmit applications using these formats.** Below, we highlight some key takeaways and implications for HCBS and LTSS programs from each of the CMS releases.

### **Section 1135 Waivers**

These waivers are specific to Medicare, Medicaid, and CHIP programs and are intended to ensure that sufficient health care items and services are available to eligible individuals during a crisis. In the past, there has not been a standard format or template for submitting these types of waivers. In today's release, CMS provides five groups of flexibilities with several options underneath each one. These groups include:

- 1) **Medicaid Fee-for-Service authorizations**, including waivers of prior authorization requirements and extension of existing authorizations;
- 2) **Long-term Services and Supports**, which includes flexibility on timelines for pre-admission screening and resident review (PASRR) and the nursing home minimum data set (MDS) requirements;

- 3) **Fair Hearings**, which allows states to extend state fair hearing timelines and also to bypass managed care appeals processes in order to move straight to the state process;
- 4) **Provider Enrollments**, which includes a plethora of options for expediting enrollments and expanding the pool of available providers to deliver services; and
- 5) **Reporting Requirements**, which provide some flexibility around certain data and reporting requirements.

CMS also includes a blank box for states to submit additional requests for flexibility. We note that the LTSS section of this template is fairly limited. States will likely be required to submit other applications in order to achieve the flexibility needed in HCBS/LTSS to address the COVID pandemic.

### **Appendix K**

The 1915(c) waiver Appendix K was a pre-existing template that allows states to modify certain HCBS policies in order to respond to an emergency. The Appendix K provides significant flexibility; however, but it only applies to services delivered under 1915(c) waivers. A state that delivers HCBS and LTSS through other mechanisms, such as an 1115 or state plan authority (including 1915(i) and 1915(k) state plan HCBS) would not be able to use Appendix K for those services. However, in the accompanying 1115 template, CMS provides states discretion to apply the same flexibilities included in Appendix K to these other mechanisms using 1115 authority.

CMS includes a COVID-specific section to a prefilled Appendix K in order to assist states with their response. Some important items included in the pre-print are:

- The ability to not apply the HCBS Settings requirement that individuals have visitors at any time;
- The addition of an electronic/distance option for service delivery in certain instances;
- The addition of important services, including meals, medical supplies/equipment/appliances, and assistive technology;
- The provision to allow case management entities to provide direct services in instances where it is necessary;
- The ability to modify provider qualifications in order to allow other entities to deliver HCBS, including family members and “nontraditional” meals providers;
- The additional flexibility around timelines and processes for several waiver functions, including:
  - Prior authorizations;
  - Evaluations;
  - Assessments; and
  - Service plans.

### **Section 1115 Waivers**

A significant amount of flexibility that states need to address the pandemic may not be available through standard options, even with a disaster amendment, Appendix K, or 1135 waiver. CMS provides additional flexibility to address these needs through the 1115 Waiver options, including “costs not otherwise matchable” expenditure authority. **It is important to note that CMS is not requiring COVID response waivers to adhere to usual budget neutrality requirements.** CMS is also not requiring states to adhere to the usual public notice and comment requirements for 1115 waiver applications. States can apply for these waivers retroactive to March 1<sup>st</sup>, and they will expire no later than 60 days after the end of the public health emergency. States that utilize this authority will be required to complete a final report, which includes monitoring and evaluation, no later than one year after the end of the waiver authority.

Importantly, CMS specifically states that states may use these waivers to apply disaster-response flexibility for HCBS delivered under the authority of 1915(i) and 1915(k) of the Social Security Act.

In the pre-print, CMS provides the following options for states to modify their HCBS/LTSS services:

- Allow for self-attestation or alternative verification of income/assets/level of care for LTSS eligibility;
- Providing LTSS even if the plan of care is not updated in a timely manner or if it is in alternative settings;
- Flexibility to increase LTSS service rates;
- The option to make retainer payments for habilitation and personal care services, which specifically includes adult day services;
- Allow states to modify eligibility criteria for long-term services and supports;
- The ability to reduce or delay the need for states to conduct functional assessments to determine level of care for beneficiaries needing LTSS.

The waiver template also includes a number of other areas where the state could request flexibility, such as:

- Changes to benefits;
- Waiver of statewideness;
- Ability to provide services in a different amount, duration, or scope for certain individuals; and
- Waiver of premiums, cost-sharing, or other participant costs.

It is important to note that CMS also includes many other instances where they leave space for states to propose further changes to Medicaid to respond to the COVID pandemic, beyond what is included in the pre-filled sections.

One issue that has been raised by several states, but is not addressed in this template is an ability to provide state plan personal care services using family members in order to address COVID-related provider shortages. According to 42 CFR 440.167, states cannot use family members for state plan services, although this is allowable in other HCBS delivery systems. We believe that this would require an 1115 to accomplish.

### **State Plan Amendments**

CMS includes a significant amount of options for states to implement changes to their Medicaid programs in order to address the COVID pandemic. Some options that CMS provides:

- Eligibility:
  - Temporarily adopt new eligibility categories or increase the income levels for certain individuals. One such example provided by CMS is the optional eligibility category for older adults and individuals with disabilities with incomes under 100% of the Federal Poverty Level;
  - Temporarily add new income or asset disregards for groups that are not eligible on the basis of the “Modified Adjusted Gross Income” (MAGI) standard. Of note, many older adults and individuals with disabilities are not included in MAGI groups;
  - Providing flexibility around residency requirements.
- Enrollment:
  - Expanding presumptive eligibility, including allowing the Medicaid agency to serve as an entity performing presumptive eligibility determinations;
  - Extending the eligibility redetermination period for certain individuals;
  - Implement a simplified application;
- Cost Sharing:
  - Suspend premiums, copayments, or enrollment fees; or
  - Allow for a hardship waiver of out-of-pocket costs;
- Benefits:
  - Add new benefits;
  - Modify current benefits, including Alternative Benefit Plans (ABPs) for certain populations, including the Affordable Care Act expansion group;
  - Adopting telehealth beyond current allowable uses/benefits;

- Payment:
  - Increasing rates for certain services.
- Post-Eligibility Treatment of Income:
  - Temporarily reduce or eliminate the post-eligibility treatment-of-income calculations for institutionalized individuals, and/or provide greater financial protection for institutionalized individuals who may be more financially disadvantaged during the disaster relief period: this policy would essentially provide states with the option to allow certain individuals to retain a greater portion of their funds that are usually paid as a share of cost for their LTSS; and
  - Importantly, CMS clarifies that similar changes for individuals receiving home and community-based services via 1915(c) waivers have to be made within that waiver. There does not appear to be such an option outlined in the Appendix K, so this is an area where ADvancing States will seek clarification on the proper way to effectuate any change.
- Prescription Drugs:
  - Increasing limits on the number of drugs that can be dispensed to allow for longer supply periods;
  - Expanding prior authorization; and
  - Establishing certain exceptions to state preferred drug lists.

### **Conclusion**

CMS provided expansive tools and authority for states to craft Medicaid policies that support responses to the COVID-19 pandemic. While there remain outstanding questions about certain policies and responses, the items released today provide a solid framework and extensive flexibility to states as they work to maintain the health and welfare of Medicaid enrollees and respond to the pandemic. ADvancing States is appreciative of CMS' flexibility and we look forward to continuing our collaboration with CMS to ensure that states are able to provide the best supports possible for older adults and people with disabilities during this pandemic. As always, please feel free to reach out to anyone on the ADvancing States team with questions, concerns, or requests for assistance.