

**Section 1135 Waiver COVID-19
State/Territory Request Template**

Introduction

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and consistent with section 1135 of the Social Security Act (Act). On the same day, pursuant to section 1135 of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act to mitigate the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Daylight Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and waivers will no longer be available, upon termination of the public health emergency, including any extensions.

States/territories can request approval that certain statutes and implementing regulations be waived by CMS, pursuant to section 1135 of the Act. The following list includes some of the temporary flexibilities available to CMS under section 1135 of the Act. Please check the box on the flexibilities that the state/territory is requesting. Please include any additional flexibilities that the state/territory is requesting under the section 1135 waiver authority under “Number 6 – Other Section 1135 Waiver Flexibilities”.

Please complete the following fields:

State/Territory Name: Maine

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1) Medicaid Authorizations:

- 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
- 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

2) Long Term Services and Supports

- Suspend pre-admission screening and annual resident review (PASRR) Level I and Level II Assessments for 30 days
- Extend minimum data set authorizations for nursing facility and skilled nursing facility (SNF) residents

3) Fair Hearings

- Allow managed care enrollees to proceed almost immediately to a state fair hearing without having a managed care plan resolve the appeal first by permitting the state to modify the timeline for managed care plans to resolve appeals to one day so the impacted appeals satisfy the exhaustion requirements
- Give enrollees more than 120 days (if a managed care appeal) or more than 90 days (if an eligibility for fee-for-service appeal) to request a state fair hearing by permitting extensions of the deadline for filing those appeals by a set number of days (e.g., an additional 120 days)

4) Provider Enrollment

- Waive payment of application fee to temporarily enroll a provider
- Waive criminal background checks associated with temporarily enrolling providers
- Waive site visits to temporarily enroll a provider
- Permit providers located out-of-state/territory to provide care to an emergency State's Medicaid enrollee and be reimbursed for that service
- Streamline provider enrollment requirements when enrolling providers

- Postpone deadlines for revalidation of providers who are located in the state or otherwise directly impacted by the emergency
- Waive requirements that physicians and other health care professionals be licensed in the state in which they are providing services, so long as they have equivalent licensing in another state
- Waive conditions of participation or conditions for coverage for existing providers for facilities for providing services in alternative settings, including using an unlicensed facility, if the provider's licensed facility has been evacuated

5) Reporting and Oversight

- Modify deadlines for OASIS and Minimum Data Set (MDS) assessments and transmission
- Suspend 2-week aide supervision requirement by a registered nurse for home health agencies
- Suspend supervision of hospice aides by a registered nurse every 14 days' requirement for hospice agencies

6) Other Section 1135 Waiver Flexibilities. Please include any additional flexibilities that the state/territory is requesting under the Section 1135 waiver authority:

1. Provide Flexibility to Temporarily Delay Scheduling of Medicaid Fair Hearings and Issuing Fair Hearing Decisions during the Emergency Period: The State requests a blanket waiver be issued to temporarily delay aspects of the Medicaid Fair Hearing process.

2. Waiver of Required Certification Timelines for Qualified Staff: The State requests a blanket waiver to allow qualified staff who require certification to fulfill their role to remain qualified in the event certification lapses and/or cannot be obtained during the emergency period.

3. Waiver of Certain Staffing and Staff Qualification Requirements: The State requests a blanket waiver to allow the State the ability to amend provider staff qualifications as appropriate and/or required ratios necessary to allow providers to continue provision of services in a safe manner in the event qualified staff become unavailable during the emergency period.

4. Waiver of Opioid Treatment Program (OTP) Take-Home requirements: The State requests blanket exceptions for all stable patients in an OTP to receive 28 days of Take-Home doses of the patient's medication for opioid use disorder. Additionally, the State requests up to 14 days of Take-Home medication for those patients who are less stable but who the OTP believes can safely handle this level of Take-Home medication.

5. Public Notice and Tribal Consultation: The State requests a blanket waiver of public notice requirements for state plan amendments that only provide or increase beneficiary access to items or services related to COVID-19. In addition, the State requests flexibility in tribal consultation, including

reducing the number of days before submission or engaging in consultation after the submission of the state plan amendment. The State also requests flexibility in the state plan amendment submission guidelines that prevent a submission from receiving an effective date prior to the standard calendar quarter of submission.

6. Co-payments and Premiums: The State requests the flexibility to waive co-payments and premiums for members at the state's discretion.

7. Alternative Setting: The State requests a blanket waiver to allow all providers to enroll and provide service at alternative sites as necessary in order to respond to a COVID-19 related issue.

8. Permit Receiving (provider) Site Services via Telehealth for Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC): The State requests a blanket waiver to allow FQHC and RHC providers to deliver services via telehealth as the receiving (provider) site and bill for those services.

The State asks that the following flexibilities apply to all counties within the State as the President of the United States has declared an emergency or disaster under the Stafford Act and the HHS Secretary has declared a Public Health Emergency Declaration under Section 319 of the Public Health Service Act. The State will modify, tighten, clarify, and manage all approved 1135 flexibilities at its discretion to achieve their targeted intent during the COVID-19 emergency and limit any unintended consequences that may arise. Additionally, due to the evolving public health emergency, the State may subsequently request the approval of additional flexibilities as additional needs are identified. Additionally, the State anticipates the submission of State Plan Amendments and Appendix K documents in the future to request additional federal flexibilities in response to this public health emergency. Thank you for your prompt attention and assistance as Maine works to support providers and ensure beneficiaries have access to care throughout the COVID-19 public health emergency.