

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



March 12, 2021

Jacey Cooper, Chief Deputy Director
Health Care Programs
Department of Health Care Services
1501 Capitol Avenue, MS 0000
Sacramento, California 95899-7413

Re: Section 1135 Flexibilities Requested in December 24, 2020 Communication (Fourth Request)

Dear Ms. Cooper:

The Centers for Medicare & Medicaid Services (CMS) granted initial approval to the State of California for multiple section 1135 flexibilities on March 23, 2020, and subsequent approvals on May 8, 2020, and August 19, 2020. Your follow-up communication to CMS on December 24, 2020, detailed additional federal requirements that also pose issues or challenges for California's health care delivery system and requested a waiver or modification of those other requirements. Attached, please find a response to your requests for waivers or modifications, pursuant to section 1135 of the Social Security Act (Act), to address the challenges posed by COVID-19. This approval addresses those requests related to Medicaid, and the Children's Health Insurance Program (CHIP), as applicable. This approval applies to the waivers included below and the 1135 waivers granted to the state on March 23, 2020, May 8, 2020, and August 19, 2020. At the state's request, CMS is issuing this updated letter in order to reflect a January 1, 2021 effective date for the flexibilities listed below. This letter replaces the original approval letter dated December 31, 2020.

On March 13, 2020, the President of the United States proclaimed 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 Act. On March 13, 2020, according to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify specific requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by 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

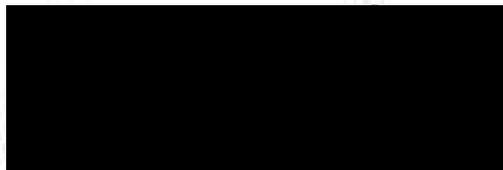
exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6 PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and section 1135 waivers will no longer be available upon the public health emergency's termination, including any extensions.

To streamline the section 1135 waiver request and approval process, CMS has issued several blanket waivers for many Medicare provisions, which primarily affect requirements for individual facilities, such as hospitals, long-term care facilities, home health agencies, etc. Waiver or modification of these provisions does not require individualized approval, and, therefore, these authorities are not addressed in this letter. Please refer to the current blanket waiver issued by CMS that can be found at <https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>.

CMS continues to work on the additional waiver or modification requests not currently reflected in the attached approval. For those waiver or modification requests that require approval under authority other than section 1135, such as under applicable regulations, through an amendment to the state plan, or a section 1115 demonstration, my staff will continue to work with your team to review and make determinations regarding approval as quickly as possible.

Please contact Jackie Glaze, Deputy Director, Medicaid and CHIP Operations Group, at (404) 387-0121 or by email at Jackie.Glaze@cms.hhs.gov have any questions or need additional information. We appreciate your and your staff's efforts in responding to the needs of the residents of the State of California and the health care community.

Sincerely,

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Anne Marie Costello
Acting Deputy Administrator and Director

STATE OF CALIFORNIA
APPROVAL OF FEDERAL SECTION 1135 WAIVER REQUESTS

CMS Response: March 12, 2021

Modification of 42 C.F.R. §431.231(a) timeframe for reinstatement of benefits related to fair hearing

California requested flexibility to temporarily extend the timeframe to reinstate services and benefits to an individual who files a fair hearing request under 42 C.F.R. § 431.221(d). Under 42 C.F.R. § 431.231(a), states have the option to reinstate services if a beneficiary requests a fair hearing not more than 10 days after the date of action (e.g., the date of termination). Under section 1135(b)(5) of the Act, CMS approves a waiver to allow the state to extend this timeframe so that it may reinstate services and benefits for beneficiaries who request a fair hearing more than 10 days after the date of action, but not to exceed the time permitted (under either the state plan or under an approved section 1135 waiver) for beneficiaries to request a fair hearing. The state should reinstate the individual's services and benefits as quickly as practicable.

Modification of 42 C.F.R. §438.420(a)(i) timeframe to continue or reinstate benefits

California has requested a waiver under section 1135 of the Act to modify the timelines for some specific requirements in 42 C.F.R. Part 438. Federal regulations at 42 C.F.R. Part 438, Subpart F establish appeals and grievance requirements for Medicaid managed care. Section 1135 of the Act does not provide authority to waive appeal and grievance requirements or waive timelines and deadlines; however, CMS does have authority to modify timeframes for required activities during an emergency period under section 1135(b)(5) of the Act. Therefore, CMS approves the following through the end of the public health emergency: Modification of the timeframe under 42 C.F.R. § 438.420(a)(i) to allow the Medicaid managed care plan to continue benefits if requested within the current 10-day time frame or reinstate benefits for the enrollee when the individual requests continuation of benefits between 11 and 30 days if the managed care plan has not yet made a decision on the appeal or the State fair hearing is pending. The managed care plan will not seek reimbursement or payment for the additional days of services furnished during this period (aside from otherwise applicable cost sharing if any) from the enrollee.

Duration of Approved Waivers

Unless otherwise specified above, the section 1135 waivers described herein are effective January 1, 2021 and will terminate upon termination of the public health emergency, including any extensions. In no case will any of these waivers extend past the last day of the public health emergency (or any extension thereof).