



State of California—Health and Human Services Agency
Department of Health Care Services



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April 10, 2020

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**REQUEST FOR ADDITIONAL SECTION 1135 WAIVER FLEXIBILITIES
RELATED TO NOVEL CORONAVIRUS DISEASE (COVID-19) NATIONAL
EMERGENCY/PUBLIC HEALTH EMERGENCY**

Dear Ms. Glaze:

The Department of Health Care Services (DHCS) writes to request approval for the below additional detailed flexibilities under Section 1135 of the Social Security Act (42 U.S.C. § 1320b-5) as related to the Novel Coronavirus Disease (COVID-19). These flexibilities are in addition to the requests submitted from DHCS on March 16, 2020 and March 19, 2020. As you know, the COVID-19 outbreak was declared a national emergency on March 13, 2020, and was previously declared a nationwide public health emergency on January 31, 2020 (retroactive to January 27, 2020).

The below list represents California's additional requested flexibilities under the Section 1135 authority in connection with the COVID-19 outbreak and emergency based on further exploration of need and ongoing conversations between DHCS and CMS. Because circumstances surrounding the COVID-19 emergency remain quite fluid, DHCS may subsequently request approval for additional flexibilities, which we can commit to doing promptly as soon as the need is discovered. In the event approval is not available under Section 1135 for any of the below, DHCS requests to amend our pending COVID-19 related Section 1115 demonstration or State Plan Amendment to include such proposals, assuming approval is potentially available under those authorities.

DHCS requests a retroactive effective date of March 1, 2020 for the below proposed Section 1135 flexibilities, to coincide with the effective date granted in our first Section 1135 waiver approved by CMS on March 23, 2020, unless otherwise specified.

In addition, DHCS requests confirmation that any approved flexibility granted with respect to fee-for-service Medi-Cal benefits and providers would apply equally, to the extent applicable, to our various federally approved delivery systems, such as Medi-Cal managed care plans, county organized health systems, county mental health plans, and Drug Medi-Cal organized delivery systems (DMC-ODS) and to the State's standalone Children's Health Insurance Program.

1. General: Medicare Blanket Waivers for Medicaid-only Providers

- On our March 31, 2020 call regarding California's Section 1135 requests, CMS indicated that DHCS need not separately request approval for COVID-19 related waivers/flexibilities granted in Medicare for providers that are dually certified to participate in both Medicaid and Medicare programs. CMS did indicate however that approval under Section 1135 is required to apply the blanket Medicare waivers to Medicaid providers that are not certified to participate in the Medicare program. Accordingly, DHCS requests approval to apply any applicable flexibilities granted in the Medicare blanket waivers to providers that are only certified for Medicaid participation.

2. Service authorization and utilization controls, including but not necessarily limited to:

- Waiver of medical necessity criteria for non-medical transportation and non-emergency medical transportation, and instead permit beneficiaries to use whatever available transportation service is the safest for them during the pandemic. For example, while some beneficiaries who are immunocompromised ordinarily receive transportation assistance to access public transportation to reach their medical appointments, it is not appropriate for these beneficiaries to use public transportation at this time.
- Waiver to reimburse any paramedics (EMT-P) licensees to transport patients to medical facilities other than acute care hospitals when approved by California Emergency Medical Services (EMS) Authority.
- Allow for verbal acceptance by a beneficiary of necessary changes to care plans for services provided under HCBS waivers pursuant to Section 1915(c) that require written confirmation from beneficiaries. DHCS requests authority for the state to permit case managers to accept verbal confirmation from the beneficiary when they agree with temporary modifications to their plan of care in response to the COVID-19 outbreak. To minimize risk to beneficiaries, case managers, and providers during the COVID-19 outbreak, DHCS seeks to limit in-person interactions between individuals when care plans need to be made to an individual's care plan in response to the emergency. Allowing service plans to be modified with verbal confirmation from the beneficiary would remove the need to

conduct in-person meetings where beneficiary signatures are usually obtained, and would remove the delay involved in obtaining signatures by mail. Case management services would continue to pay at the same rate as if the service was provided in person, and without penalization.

3. **Managed Care**, including but not necessarily limited to:

- Waiver to modify the timeframe (i.e., within 90 days of enrollment) for completion of initial health assessment required under 42 C.F.R. § 438.208(b)(3). The State requests to allow up to 180 days for completion of initial health assessments for beneficiaries enrolled with the managed care plan as of December 1, 2019 and up to the duration of the public health emergency.
- Waiver of quality assessment and performance improvement activities required under 42 C.F.R. § 438.330 for the duration of the public health emergency. Due to the shift in resources necessary to focus on COVID-19 efforts, the State requests a waiver, consistent with Medicare data quality reporting flexibilities, from January 1, 2020 through June 30, 2020, for the following: data collection and submission requirements required under §§ 438.330(b)(2)-(3) and (c)(1)-(2); requirements to detect over and under-utilization required under § 438.330(b)(3); and, requirements to conduct performance improvement projects required under §§ 438.330(b)(1) and (d)(1-4).

4. **Telehealth/Telephonic/Virtual Visits**, including but not necessarily limited to:

- Waive Drug Medi-Cal Organized Delivery System (DMC-ODS) authorization requirements in STC 132(e)(ii) of the Medi-Cal 2020 Demonstration to allow flexibility to perform the initial medical necessity determination for DMC-ODS benefits by telephone by a Medical Director, Licensed Physician, or Licensed Practitioner of the Healing Arts (LPHA). The initial medical necessity determination includes the establishment of a substance use disorder diagnosis and an assessment indicating the appropriate level of care placement using American Society of Addiction Medicine (ASAM) Criteria.
- Waive the requirement in Section III.B.3.iv of the CMS-approved DMC-ODS Intergovernmental Agreement to authorize a certified Alcohol or Other Drug certified counselor to perform intake and assessment by telephone. If the initial intake and assessment are performed by a certified counselor, the Medical Director/physician/LPHA shall evaluate that assessment with the counselor and the Medical Director/physician/LPHA shall perform the initial medical necessity determination (including the establishment of a substance use disorder diagnosis and an assessment indicating the appropriate level of care placement using the ASAM Criteria), in accordance with the DMC-ODS Intergovernmental

Agreement. This evaluation of the assessment can also be conducted by telephone.

5. Clarification of Previous Requests:

- Item 1 in the March 16, 2020 1135 Waiver requested waiver/flexibility to allow providers to receive payments for services in alternative physical settings. DHCS wants to clarify that it intends for this request to encompass Medi-Cal behavioral health services that are site-specific, even if some of the services can be provided outside of those sites, including but not limited to, crisis stabilization services, crisis residential treatment services, adult residential treatment services, day treatment intensive services, day rehabilitative services, and psychiatric health facility services, as authorized in California's Medicaid State Plan sections: Supplement 2 to Attachment 3.1-B, and Supplement 3 to Attachment 3.1-A, and perinatal residential services and DMC-ODS residential services as authorized in Supplement 2 to Attachment 3.1-B, and Supplement 3 to Attachment 3.1-A and in the Medi-Cal 2020 Demonstration.

During such difficult times for California and the nation, DHCS greatly appreciates the prompt attention exhibited by CMS to these matters and we look forward to the continued partnership.

Sincerely,

Original Signed By:

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State Medicaid Director

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Page 5
April 10, 2020

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