

**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: South Carolina

Contact Name: Joshua D. Baker

Contact Title and Agency: Director, South Carolina Department of Health and Human Services

Email: joshua.baker@scdhhs.gov

Phone: 803-898-2504

Date Submitted: 27 March 2020

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:

Additional Provider Enrollment and Qualification Provisions

Ownership disclosure, pursuant to 42 CFR 455.104 to the extent that it is waived for providers enrolled only for the duration of the COVID-19 declared public health emergency.

Waiver of such statutes and regulations necessary to conduct any provider or contractor audit, document review, site visit, or quality certification at the state's discretion until July 1, 2020, or the end of the public health emergency, whichever is sooner.

Waiver of the provisions of 42 CFR 455.470 to the extent that all outstanding provider enrollment moratoria are extended until the end of the public health emergency, or expiration of the moratoria, whichever is later.

Waiver of 42 CFR Part 440 to the extent that providers located out of state may provide care to the state's Medicaid beneficiaries and receive reimbursement as the state identifies critical provider shortages by discipline or category.

Waiver of Act Sections 1919 (b) and 1919 (f) as articulated in 42 CFR 483.150 through .160 to support the Certified Nurse Aide and Paid Feeding Assistant workforce.

Waiver of such statutes and regulations necessary to permit licensed and enrolled providers to render and be reimbursed for care in alternate settings if such a facility is used to create new inpatient care capacity, or step-down capacity for skilled nursing or 1915(c)-like home and community-based services to support discharges that preserve existing inpatient care capacity, under the following circumstances:

- Care must be rendered as if the care had been in the provider's facility;
- Care can be provided without respect to geographic limitations, provided that the care is rendered within the South Carolina Medicaid Service Area; and,
- Care can be rendered at a location that is not an enrolled provider facility, if (1) the site of care has been otherwise licensed by the state, (2) the state's licensure law has been suspended or otherwise lawfully waived by state authorities, or (3) the state makes a reasonable assessment that the site of service meets minimum standards.

Waiver of such statutes and regulations necessary to create seamless interoperability within a hospital-centered healthcare delivery system that is under common ownership and control, to the extent necessary, to facilitate triaging and cohorting, such as by:

- Allowing one or more hospitals within a single healthcare system to suspend emergency room services so that the facility can be fully dedicated to cohorting as part of a system-wide plan; and,
- Allowing patients to be transferred across facilities within a single healthcare system to facilitate treatment and/or cohorting without formally discharging or readmitting those patients, but instead acting as if for reporting and reimbursement purposes, the patient had never left the original facility.

Waiver of such statutes and regulations necessary to permit facilities to preserve their licensure and enrollment even if they suspend their normal operations for purposes of serving as an overflow or alternate treatment site for other licensed and enrolled providers.

Managed Care Provisions

Waiver of 42 CFR 438.6(c) to the extent that it would allow the state to continue existing payment arrangements for an additional year, with the ability of the South Carolina Department of Health and Human Services (SCDHHS) to vary the overall value or administrative parameters of the payment arrangement, so long as the underlying payment model does not change.

Waiver of 42 CFR 438.602 to the extent that managed care organizations can enroll qualified and willing providers that are not already enrolled in fee-for-service Medicaid.

Waiver of all 42 CFR 438 subpart E activities that are date- or time- specific until the end of the declared public health emergency.

Provisions Related to Other Services and Populations

Waiver of 42 CFR Part 447 Subpart I to the extent that the state may modify the pharmacy dispensing fee to account for delivery of pharmaceuticals for pharmacies electing to deliver prescribed drugs to promote social distancing for at-risk populations.

Suspension of beneficiary cost sharing provisions as detailed in section 4 of the South Carolina State Plan.

Waiver of 42 CFR 440.70(f) to expedite hospital discharges or avoid hospital or nursing home admissions, as well as afford the ordering of home health services pursuant to evaluations conducted via telemedicine.

Waiver of 42 CFR 435.622(c) and other applicable statutes and regulations requiring validation of a 30-day stay in a skilled nursing facility as a requirement of eligibility to the extent that the state may accept clinical certification of the likelihood of a 30-day admission in lieu of direct verification.

Administrative Provisions

Waiver of section 1115 timelines and reporting requirements as detailed in the Special Terms and Conditions for the “Palmetto Pathways to Independence” and “Healthy Connections Works” section 1115 demonstration waivers and related implementation and evaluation plans, as the interaction between Section 6008 of the Families First Coronavirus Response Act and the indeterminate timeline of the declared public health emergency have invalidated the timelines agreed-to by the state and CMS.

Waiver of all advanced public notice requirements for state plan amendments and waivers for provisions that result in beneficiary, benefit, or provider requirements that are less restrictive than those otherwise in effect pursuant to the state plan or waiver and are temporary in nature. The state is not requesting a total waiver of public transparency, and will post documents at <https://msp.scdhhs.gov/covid19/>

Waiver of advance tribal notification requirements for state plan amendments and waivers for provisions that result in beneficiary, benefit, or provider requirements that are less restrictive than those otherwise in effect pursuant to the state plan or waiver and are temporary in nature. The state is not requesting a total waiver of public transparency, and will post documents at <https://msp.scdhhs.gov/covid19/>

Waiver of 42 CFR 430.16 to the extent that any requests for additional information, companion letter, or other request related to a state plan amendment are tolled until 30 days following the end of the declared public health emergency or the original due date, whichever is later.

Waiver of 42 CFR 430.20 to the extent that SCDHHS can submit state plan amendments retroactive back to the beginning of the declared public health emergency during the period of the public health emergency.

Waiver of any applicable statute or regulation that requires the timely submission of reports, evaluations, data, or attestation to CMS not otherwise requested or approved in this waiver until July 1, 2020, or the original due date, whichever is later.

Waiver of any applicable statutes or regulations to ensure that the provisions of this approved 1135 are effective retroactive to March 1, 2020.