



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



GAVIN NEWSOM
GOVERNOR

December 24, 2020

Ms. Jackie Glaze
Acting Director
Medicaid & CHIP Operations Group Center for Medicaid & CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Submitted electronically via: Jackie.Glaze@cms.hhs.gov

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 for the below-detailed additional flexibilities under Section 1135 of the Social Security Act (42 U.S.C.

§ 1320b-5) as related to the COVID-19. These flexibilities are in addition to the requests submitted from DHCS on March 16, 2020, March 19, 2020, and April 10, 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 Centers for Medicare & Medicaid Services (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 an effective date of January 1, 2021, for the below proposed Section 1135 flexibilities.

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. 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.

2. 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 ten-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 and 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.

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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,



Jacey Cooper
Chief Deputy Director
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State Medicaid Director

Enclosures

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