

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:

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On January 31, 2020, the Secretary of the Department of Health and Human Services (HHS) declared a nationwide public health emergency under Section 319 of the Public Health Service Act, 42 U.S.C. § 1320b-5. On March 13, 2020, the President declared a national emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 1315. In response, the Massachusetts Executive Office of Health and Human Services (EOHHS) submitted a request on March 20, 2020 for flexibilities under Section 1135 of the Social Security Act (42 U.S.C. § 1320b-5) as related to the Novel Coronavirus Disease (COVID-19) National Emergency & Public Health Emergency.

EOHHS is the Single State Agency for the administration of the Massachusetts Medicaid and Children's Health Insurance Program (MassHealth). EOHHS received approval from the Centers for Medicare (CMS) on a number of its previously requested flexibilities under Section 1135 waiver authority. EOHHS is grateful for CMS's timely approvals, which will enable the Commonwealth to respond rapidly to the on-going emergency. EOHHS also appreciates the clarifying information provided by CMS on which blanket waivers may be applicable to some of the pending requests and which other authority vehicles may be required on certain other requests. EOHHS is still seeking approval for the remaining outstanding flexibility requests from the Commonwealth's March 20th, April 7th, April 23rd and July 9th submissions, and looks forward to continuing to discuss these requests with CMS.

At this time, EOHHS is requesting that CMS grant additional waivers of certain federal healthcare laws and regulations per the same said section in response to the public health emergency surrounding the outbreak of the coronavirus disease 2019 (COVID-19). This request letter is based on the template released by CMS on March 22, 2020, but removes items not related to this request. EOHHS is attaching its previous requests (March 20, 2020, April 7, 2020, April 23, 2020 and July 9, 2020) which are incorporated by reference. The specific statutory and regulatory waivers that the State and its partners in the healthcare community seek are outlined below. Consistent with Section 1 of the President's March 13, 2020, national emergency declaration, Massachusetts requests a retroactive effective date of March 1, 2020, for the requested Section 1135 flexibilities to coincide with the effective start date of the Public Health Emergency.

In addition, to the extent that any approved flexibilities apply to MassHealth, EOHHS requests confirmation that they apply equally, to the extent applicable, to our various managed care plans, including Accountable Care Partnership Plans (ACPPs), Managed Care Organizations (MCOs), One Care Plans, Senior Care Organizations (SCOs) and the MassHealth Behavioral Health Vendor. EOHHS intends to apply all waivers granted to both Medicaid and CHIP as applicable.

Massachusetts will work to ensure appropriate guardrails and protections are in place to protect patient safety. The MassHealth program will also work to maintain program integrity to the extent practicable under the circumstances.

March 20, 2020 1135 Waiver Submission: <https://www.mass.gov/doc/massachusetts-1135-waiver-request/download>

April 7, 2020 1135 Waiver Submission: <https://www.mass.gov/doc/massachusetts-1135-waiver-2nd-round/download>

April 23, 2020 1135 Waiver Submission: <https://www.mass.gov/doc/massachusetts-1135-waiver-request-3rd-round/download>

July 9, 2020 1135 Waiver Submission: <https://www.mass.gov/doc/massachusetts-1135-waiver-request-4th-round/download>

1) Medicaid Authorizations

2) Long Term Services and Supports

3) Fair Hearings

4) Provider Enrollment

5) Reporting and Oversight

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

- MassHealth would like to expand the types of providers that may direct Private Duty Nursing services, as described in 42 CFR 440.80, to include a nurse practitioner, clinical nurse specialist, or a physician assistant. We would like to align this with the flexibility provided in the CARES Act for Home Health Agencies, however, we are seeking to terminate the requested flexibility for private duty nursing at the end of the national public health emergency.