

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



October 29, 2020

Marylou Sudders
Secretary
Executive Office Health and Human Services
Office of Medicaid
One Ashburton Place, Room 1109
Boston, Massachusetts 02108

Re: Section 1135 Flexibilities Requested in April 23, 2020 and September 29, 2020
Communications (Third and Fifth Request)

Dear Secretary Sudders:

The Centers for Medicare & Medicaid Services (CMS) granted an initial approval to the State of Massachusetts for multiple section 1135 flexibilities on March 26, 2020. Your follow-up communication to CMS on April 23, 2020 and September 29, 2020 detailed a number of additional federal requirements that also pose issues or challenges for the health care delivery system in Massachusetts and requested a waiver or modification of those additional 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. To the extent the requirements the state requested to waive or modify apply to CHIP, the state may apply the approved flexibilities to CHIP. This applies to the waivers included below, as well as the 1135 waivers granted to the state on March 26, 2020, as well as the 1135 waivers granted to the state on May 8, 2020 and June 16, 2020.

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 Act. On March 13, 2020, pursuant 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 certain 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 6PM 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 termination of the public health emergency, including any extensions.

To streamline the section 1135 waiver request and approval process, CMS has issued a number of blanket waivers for many Medicare provisions, which primarily affect requirements for individual facilities, such as hospitals, long-term care facilities, home health agencies, and so on. 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 that are 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 through 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 if you have any questions or need additional information. We appreciate the efforts of you and your staff in responding to the needs of the residents of the State of Massachusetts and the health care community.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Marie Costello". The signature is written in a cursive, flowing style.

Anne Marie Costello
Acting Deputy Administrator and Director

STATE OF MASSACHUSETTS
APPROVAL OF FEDERAL SECTION 1135 WAIVER REQUESTS

CMS Response: October 29, 2020

To the extent applicable, the following waivers and modifications also apply to CHIP.

Requirement to Obtain Beneficiary and Provider Signatures of HCBS Person-Centered Service Plan

Pursuant to section 1135(b)(1)(C) of the Act, CMS is granting authority to permit the state to temporarily waive written consent required under home and community based service programs under 42 C.F.R. §441.301(c)(2)(ix) for 1915(c) waiver programs, 42 C.F.R. §441.725(b)(9) for 1915(i) HCBS state plan programs, and 42 C.F.R. §441.540(b)(9) for 1915(k) Community First Choice programs that require person-centered service plans receive written consent from beneficiaries and be signed by beneficiaries and all providers responsible for its implementation and permit documented verbal consent as an alternate.

Private Duty Nursing

Pursuant to section 1135(b)(1)(A) of the Act, CMS approves a waiver of 42 C.F.R. § 440.80(b) to allow PDN services to be directed by a nurse practitioner, clinical nurse specialist, and/or physician assistant. This flexibility allows the state to reimburse for PDN services provided by qualified providers under the direction of nurse practitioners, clinical nurse specialists and/or physician assistants during the COVID-19 PHE.

Duration of Approved Waivers

Unless otherwise specified above, the section 1135 waivers described herein are effective March 1, 2020 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).