

**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 requested flexibilities on March 26, 2020. 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 as well as the requests included in the subsequent April 7th submission, and looks forward to discussing 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 for which CMS has already granted Massachusetts a waiver. EOHHS is attaching its previous requests (March 20, 2020 and April 7, 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, unless otherwise specified.

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>

1) Medicaid Authorizations

Flexibilities approved by CMS on March 26, 2020

2) Long Term Services and Supports

Flexibility approved by CMS on March 26, 2020: Suspend pre-admission screening and annual resident review (PASRR) Level I and Level II Assessments for 30 days

Flexibility requested as specified in April 7, 2020 request: Extend minimum data set authorizations for nursing facility and skilled nursing facility (SNF) residents

3) Fair Hearings

Flexibilities approved by CMS on March 26, 2020

4) Provider Enrollment

Flexibilities approved by CMS on March 26, 2020

5) Reporting and Oversight

Flexibilities requested:

- ✓ Modify deadlines for OASIS and Minimum Data Set (MDS) assessments and transmission
 - Checkbox with qualifications – as specified in 4/7/20 request: EOHHS' understanding is that CMS has already waived OASIS. EOHHS is therefore only requesting flexibility for the MDS requirements.
- ✓ Suspend 2-week aide supervision requirement by a registered nurse for home health agencies
 - As specified in 3/20/20 request
- ✓ Suspend supervision of hospice aides by a registered nurse every 14 days' requirement for hospice agencies
 - As specified in 4/7/20 request

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

- As Massachusetts has a large number of hospitals that provide graduate medical education which are treating large numbers of COVID-19 patients, EOHHS requests a waiver of the Indirect Medical Education (IME) requirements of 42 CFR § 412.105 during the public health emergency (PHE). Under 42 CFR § 412.105, IME reimbursement is calculated based on the ratio of full-time-equivalent residents to beds per the cost accounting period. Because the resident-to-bed ratios will likely fluctuate as hospitals expand capacity to address patient surges, Massachusetts requests that the hospitals are "held harmless" such that the hospital's IME ratio for the prior cost accounting

period be used for IME reimbursement during the PHE or similar protection to maintain IME reimbursement levels during the pandemic.

- To ensure that enrollees without smartphones and similar technologies maintain access to vital Medicare-covered services during the COVID-19 public health emergency, EOHHS requests that Medicare reimburse for all telehealth-eligible Medicare-covered services (as that list may be updated from time-to-time), including evaluation and management services, regardless of whether those services are delivered via audio-only or video telehealth, when the provider determines the services and telehealth format are clinically appropriate and medically necessary.
- EOHHS requests a waiver of the member signature requirements under 42 CFR 418.28 when a member revokes their hospice election.
- For each of its 1915(c) home and community-based services waivers, EOHHS requests a waiver of the 42 CFR 441.301(c)(3) requirement that person-centered service plans be reviewed at least every 12 months, in order to allow up to 18 months for such person-centered service plan reviews to be completed.
- For each of its 1915(c) home and community-based services waivers, EOHHS requests waiver of the community-based settings requirements under 42 CFR 441.301 for new settings introduced into an HCBS waiver program (i.e., alternative settings necessitated because of the COVID-19 emergency), consistent with CMS's 4/9/20 comments and guidance regarding Massachusetts' Appendix K request.
- For targeted case management services provided to each population described in the State Plan, EOHHS requests a waiver of the 42 CFR 440.169(d)(4) requirement for an annual monitoring activity, in order to allow up to 18 months for such monitoring activities to be completed.

The following items from the April 7, 2020 request are still pending:

- EOHHS requests waiving the requirement under 42 CFR 440.110 that physical therapists, occupational therapists and Speech-Language Pathologists obtain a written prescription or referral before rendering services and/or before submitting claims, and instead permit an oral prescription/referral.
- EOHHS requests waiver of the face-to-face requirement under 42 CFR 440.70, which requires a face-to-face encounter with an authorized practitioner within the six months before the order is written for durable medical equipment (DME) or oxygen and respiratory equipment. Providers would continue to be required to provide a prescription for, and demonstrate the medical necessity of, DME and oxygen and respiratory equipment.
- EOHHS requests flexibility to delay conducting Time Studies and Random Moment Time Studies (RMTS) until after the emergency period.
- EOHHS requests a waiver to allow a nursing facility, if deemed to be in the best interest of the public health by the Commonwealth of Massachusetts, to discharge or transfer its residents for the purposes of establishing a designated COVID-19 wing, unit, or building at the facility, notwithstanding any applicable requirement to the contrary in 42 CFR 483.15 or 42 CFR 483.21.
- EOHHS requests a waiver to modify any applicable notice or appeal requirements and time frames in 42 CFR 431.200, et seq., 42 CFR 483.10, 42 CFR 483.15, and 42 CFR 483.21 in order to allow, if deemed to be in the best interest of the public health by the Commonwealth of Massachusetts, the expeditious discharge or transfer of a nursing facility resident for the purposes of establishing a designated COVID-19 wing, unit, or building at a nursing facility.
- EOHHS requests authority to adjust the timelines for submission and approval of Advance Planning Documents (APDs) for contracts related COVID-19 response, to allow expedited submission and approval for new APDs and contracts and modifications to existing APDs and contracts that support COVID response, such as those involving Information Technology, equipment, systems, or staff.
- EOHHS requests flexibility for One Care and Senior Care Options plans to extend time periods for conducting MDS and comprehensive assessments.
- EOHHS requests authority to allow Senior Care Options (SCO) to enroll individuals into SCO plans via telephone. Each telephonic enrollment request will be recorded (audio) and will include a statement of the individual's agreement to be recorded, all required elements

necessary to complete the enrollment, and a verbal attestation of the individual's intent to enroll in the SCO plan. Individuals will be advised that they are completing an enrollment request. If the request is made by the beneficiary's authorized representative, the recording must include the attestation regarding the individual's authority to complete the request, in addition to the required contact information. EOHHS will also ensure that the telephonic enrollment request is initiated and effectuated entirely by the beneficiary or his or her authorized representative.

- EOHHS requests flexibility for PACE Organizations to accept electronic and telephonic signatures on PACE enrollment agreements for PACE participants enrolled during the emergency period. PACE enrollment agreements signed electronically or telephonically will contain appropriate notation of the emergency period circumstance for audit purposes.
- EOHHS requests flexibility for PACE Organizations to extend time periods for conducting initial PACE assessments and scheduled reassessments. PACE Organizations are expected to continue providing timely unscheduled reassessments that are needed due to a change in health or psychosocial status of a participant during the emergency period.
- EOHHS requests flexibility for PACE Organizations to modify the members of the interdisciplinary team required to be present for initial PACE assessments and reassessments. PACE Organizations are expected to ensure that discipline-specific assessments are conducted for all PACE participants as appropriate.
- EOHHS requests flexibility for PACE Organizations to consider certifications and licenses required for direct care staff to continue as current for the duration of the emergency period without documentation of renewal.