



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
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March 20, 2020

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Acting Director
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Centers for Medicare & Medicaid Services
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Baltimore, MD 21244
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Dear Ms. Glaze:

**Request for Section 1135 Waiver Flexibilities Related to Novel Coronavirus Disease (COVID-19)
National Emergency & Public Health Emergency**

The Massachusetts Executive Office of Health and Human Services (EOHHS) urgently requests that the Centers for Medicare (CMS) grant waivers of certain federal healthcare laws and regulations in response to the public health emergency surrounding the outbreak of the coronavirus disease 2019 (COVID-19).

In response to the COVID-19 outbreak, Massachusetts has already taken extraordinary action to address the public health emergency. For example, Massachusetts has expanded telehealth coverage broadly both in the Medicaid program and commercial insurance, enabled residents to obtain emergency supplies of medications through 90-day fills and early refills, guaranteed coverage for testing and treatment of COVID-19 for both Medicaid and commercial insurance, and put in place protections to prevent Medicaid members and individuals enrolled in insurance through the State Based Marketplace (known as the Massachusetts Health Connector) from losing coverage during the emergency.

The specific statutory and regulatory waivers that the State and its partners in the healthcare community seek are outlined below.

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. The State asks CMS to deem the requests be made under that section as well.



EOHHS writes to request approval for the below flexibilities under Section 1135 of the Social Security Act (42 U.S.C. § 1320b-5) as related to the Novel Coronavirus Disease (COVID-19). EOHHS is the Single State Agency for the administration of the Massachusetts Medicaid and Children's Health Insurance Program (MassHealth).

The below list represents Massachusetts' initial requested flexibilities under the Section 1135 authority in connection with the COVID-19 outbreak and emergency. Because circumstances surrounding the COVID-19 emergency remain quite fluid, EOHHS may subsequently request approval for additional flexibilities, which we can commit to doing promptly as soon as the need is discovered. 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 Medicaid, 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.

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.

Provider participation, billing requirements and conditions for payment

In order to streamline provider enrollment and avoid the loss of any providers from our network at a time when we need "all hands on deck," Massachusetts seeks the following:

1. To reduce the administrative burden for providers and focus efforts on expedited enrollment and delivery of care to our members, waiver to temporarily cease revalidation of MassHealth providers. After the conclusion of the emergency period, MassHealth will revalidate providers that should have been revalidated during the emergency period
2. To reduce administrative burden for providers, waiver to temporarily pause enforcement of MassHealth ordering, referring, prescribing provider requirements.
3. To reduce administrative burden for providers, waiver to temporarily pause implementation of requirement for all MassHealth managed care network providers to enroll in MassHealth.
4. Waiver of certain MassHealth provider screening and enrollment requirements in order to maintain capacity to meet beneficiary access needs during the emergency, including criminal background checks associated with Fingerprint-based Criminal Background Checks pursuant to 42 C.F.R §455.434; site visits pursuant to 42 C.F.R §455.432; in-state/territory licensure requirements 42 C.F.R §455.412, disclosures and disclosure statement pursuant to 42 C.F.R. §455.104 and application fees. Massachusetts will grant temporary, provisional enrollment to providers enrolled during the emergency period. After the conclusion of the emergency period, any provisionally enrolled providers would need to complete the full set of screening requirements in order to become a permanently enrolled provider.
5. Waive requirement that MassHealth providers must submit all claims no later than 12 months from the date of service. See 42 CFR 447.45(d)(1). EOHHS will require that all claims must be submitted no later than 18 months from the date of service or the date of the explanation of benefits from another insurer. This flexibility will help to reduce administrative burden for providers.

Service authorization, utilization controls, scope of practice, and administrative burden

In order to streamline access to services to all Massachusetts residents, MassHealth members and reduce administrative burden for providers:

1. Waiver to allow providers to be paid for services, including overnight stays as applicable, provided in alternative sites subject to Massachusetts' Department of Public Health Approval. Examples of alternative sites include mobile testing sites, temporary shelters, temporary field hospitals (including reimbursement for room & board otherwise available for hospitals) or other non-traditional or alternative care facilities. Waiver of site of service requirements for clinics.
2. Waiver to allow an individual to be taken to a separate facility for medical screening or allow for non-stable patients to be transferred to a different location if the patient situation requires such a transfer, as required by EMTALA, to give hospitals the flexibility to better manage capacity.
3. Waiver to allow hospitals, including free-standing psychiatric hospitals, to adjust staffing ratios as needed, subject to Massachusetts' Department of Public Health or Department of Mental Health approval.
4. Waiver for nursing facilities to adjust staffing ratios as needed. Waive maximum bed limits for nursing facilities.
5. Waiver of home health aide training requirement under 42 CFR 484.80(b) to permit faster growth in workforce.
6. Waiver of the 120-day limitation on nurse aides who have not been able to take a test to become certified or who are seeking to re-test.
7. Waiver of federal rules that require paid feeding assistant training programs for nursing facilities to be approved by the state so long as the training course developer certified to the Massachusetts Department of Public Health that the training program met the requirements of 42 CFR 483.160.
8. To reduce the administrative burden associated with hospital discharges, waiver of Pre-Admission Screening and Resident Review (PASRR) Level I and Level II Assessment, consistent with the limitations detailed in CMS's responses to Washington and Florida's 1135 Requests.
9. Waiver of Stark Law requirements that may enable hospitals to waive productivity methodologies for physicians who see a drop in patient volume and to allow donations of equipment and supplies to community physicians that may help avoid ED visits and hospitalizations.
10. Waiver to allow physician assistants (PAs) to practice without physician oversight.
11. Waiver to allow laboratory tests, including COVID-19 tests and flu tests, to have samples taken by non-physicians including trained non-medical personnel, to be ordered by a non-physician, including a nurse or physician assistant, and to be performed by non-CLIA certified labs.
12. Waiver of federal laboratory requirements, such as CLIA certificates, for locations where pathologists are working remotely using the laboratory's validated software (e.g., a pathologist using a network or virtual private network (VPN) connection or another technology approved by the CLIA Lab Medical Director). This will allow pathologists to interpret tests remotely without requiring CLIA certification of each pathologist's remote workplace.
13. Waiver of federal laboratory requirements, such as CLIA certificates, to allow a non-CLIA certified laboratory to perform tests for patients where the laboratory is part of the same hospital, facility, or institution as a CLIA certified laboratory that can be responsible for and liable for testing accuracy. This will enable an increase in COVID-19 testing capacity in Massachusetts because certain non-CLIA certified hospital laboratories have equipment to perform COVID-19 tests and are part of a hospital system with CLIA-certified laboratories.
14. For Home Health Services, waiver to allow home health agencies additional time to have a face-to-face encounter conducted by expanding the timeframe to no more than 90 days before or 60 days after the start of home health services. See 130 CMR 403.420 (A)(1)(b).

15. Waiver to relax the current home health aide supervision requirement for home health aide services provided concurrently with skilled home health services. Massachusetts requests that this timeframe be extended to a longer timeframe as specified by Massachusetts and allow home health providers to provide supervisory services via telehealth (including telephone and live video).
16. Waiver to allow performance of assessments for MassHealth integrated care plans including One Care, Senior Care Options (SCO) and Program of All-Inclusive Care for the Elderly (PACE) and other care coordination activities via telehealth, including telephonic or remote video.
17. Waiver to suspend the hospice volunteer requirement described in 130 CMR 437.421 €(1) for the duration of the emergency.
18. Waiver of any requirement that moving dialysis patients to a regional dialysis center is considered an involuntary discharge and that 30 days' notice is required before such a move.

Payments to providers

1. Waiver to make pass-through (or other lump sum) payments to certain managed care-only providers, for example certain behavioral health providers, to support them during the emergency period.
2. Waiver of upper payment limit requirements and demonstrations and requirements under 42 CFR 438.6(c) with respect to newly established supplemental payments to providers and newly established managed care directed payments necessary to maintain continued access to health care services during the national emergency.

Expand Services

1. Waiver to allow for federal financial participation for expenditures related to temporary housing for the homeless as a result of the emergency, including but not limited to, commandeered hotels, other places of temporary residence, and other facilities that are suitable for use as places of temporary residence or medical facilities as necessary for quarantining, isolating or treating, and for expenditures related to sanitation products to keep the temporary housing clean as well as funding for items to meet basic daily needs (e.g., clothes, toothbrushes). These services will be provided to individuals diagnosed with COVID-19 or at high risk of COVID-19, as determined by Massachusetts, subject to available resources.

Fair Hearing Flexibilities

1. Waiver to extend the timeframe beyond the 90-day federal limit for a MassHealth member to file a request for an appeal. This will help ensure that members will be able to receive their appeal rights, even if they are not able to file their request during the emergency period.

Administrative Activities

1. Waiver of public notice for state plan amendments (SPAs) as required under 42 C.F.R 447.205 for SPAs that only provide or increase beneficiary access to items and services related to COVID-19 (such as cost sharing waivers, payment rate increases, or amendments to ABPs adding services or providers) and would not be a restriction or limitation on payment or services or otherwise burden beneficiaries and providers, and that are temporary, with a specified sunset date related to COVID-19.
2. Waiver to shorten the tribal consultation timeframe, including shortening the number of days before submission or conducting consultation after submission of the SPA for SPAs as described in #1 in this section.

3. Flexibility to delay implementation of federal required Electronic Visit Verification by 12 months for all relevant providers rendering personal care and home health services.
4. Flexibility for timeframes of deliverables to CMS, including but not limited to monthly T-MSIS reporting, CMS-37, CMS-64, 1915(c) waiver and 1115 demonstration reports, and quality strategy report.
5. Flexibility on timeframes for managed care entity (MCE) related activities and deliverables, including but not limited to, submission of MCE contracts and rate certifications and completion of external quality review activities, including site visits and submission of EQR technical report.

EOHHS greatly appreciates the prompt attention of CMS to these matters, and we look forward to the continued partnership during and after this national emergency.

Sincerely,



Marylou Sudders

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