

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



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May 6, 2020

Tricia Roddy  
Director, Innovation, Research and Development  
Health Care Financing  
Maryland Department of Health  
201 West Preston Street  
Baltimore, Maryland 21201

Re: Section 1135 Flexibilities Requested in May 1, 2020 Communication (Second Request)

Dear Ms. Roddy:

The Centers for Medicare & Medicaid Services (CMS) granted an initial approval to the state of Maryland for multiple Section 1135 flexibilities on March 27, 2020. Your follow-up communication to CMS on May 1, 2020 detailed a number of additional federal requirements that also pose issues or challenges for the health care delivery system in Maryland 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 27, 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>.

Please contact Jackie Glaze, Deputy Director, Medicaid and CHIP Operations Group, at (404) 387-0121 or by email at [Jackie.Glaze@cms.hhs.gov](mailto: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 Maryland and the health care community.

Sincerely,

A handwritten signature in black ink, appearing to read "Calder Lynch", with a stylized flourish extending to the right.

Calder Lynch  
Deputy Administrator and Director

STATE OF MARYLAND  
APPROVAL OF FEDERAL SECTION 1135 WAIVER REQUESTS

**CMS Response: May 6, 2020**

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

**Use of Legally Responsible Individuals to Render Personal Care Services**

Pursuant to section 1135(b)(1)(B) of the Act, CMS approves a waiver to temporarily allow payment for 1905(a) personal care services rendered by legally responsible individuals (which could be inclusive of legally responsible family caregivers) providing that the state makes a reasonable assessment that the caregiver is capable of rendering such services. This waiver will ensure that medically necessary services are furnished in the event the traditional provider workforce is diminished or there is inadequate capacity due to the public health emergency.

**HCBS Settings Requirements for Specified Settings**

Pursuant to section 1135(b)(1)(B) of the Act, CMS approves a waiver to temporarily allow services provided under the 1915(c) HCBS waiver program, the 1915(i) HCBS State plan benefit, and the Community First Choice State plan option at 1915(k) to be provided in settings that have not been determined to meet the home and community-based settings criteria. This waiver applies to settings that have been added since the March 17, 2014, effective date of the HCBS final regulation (CMS 2249-F/2296-F), to which the HCBS settings criteria currently applies, to accommodate circumstances in which an individual requires relocation to an alternative setting to ensure the continuation of needed home and community-based services.

**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.