

201 South Grand Avenue East
Springfield, Illinois 62763-0002

Telephone: (217) 782-1200
TTY: (800) 526-5812

March 19, 2020

Jackie Glaze
CMS Acting Director
Medicaid & CHIP Operations Group
Center for Medicaid & CHIP Services
7500 Security Boulevard
Baltimore, MD 21244

Via email transmittal to Jackie.Glaze@cms.hhs.gov

Dear Ms. Glaze,

On January 31, 2020, the Secretary of the U.S. Department of Health and Human Services (HHS) declared a public health emergency pursuant to Section 319 of the Public Health Services Act in response to the 2019 Novel Coronavirus (COVID-19). The declarations were retroactively effective to January 27, 2020. On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak constitutes a national emergency, consistent with Section 1135 of the Social Security Act (SSA). On March 13, 2020, the Secretary of HHS waived or modified certain requirements of Titles XVIII, XIX, and XXI of the SSA as a result of the COVID-19 pandemic.

As authorized under Section 1135 of the SSA, the Illinois Department of Healthcare and Family Services (HFS) is requesting waivers of certain federal Medicaid, Children's Health Insurance Program (CHIP), and Health Insurance Portability and Accountability Act (HIPAA) regulations to ensure sufficient healthcare items and services are available to meet the needs of Illinois residents and provide flexibility to providers during the COVID-19 public health emergency.

HFS will apply approved flexibilities to Medicaid and CHIP fee-for-service and managed care services. HFS also will implement all blanket waivers announced by CMS on March 13, 2020 in Medicaid and CHIP, to the extent applicable. Additionally, as discussed on March 17, 2020, HFS will be submitting an 1115 waiver request, State Plan Amendments, and notifications of Medicaid eligibility and enrollment process changes related to the emergency COVID-19 response.

Requested Waivers under Section 1135:

HFS requests the following flexibilities under an 1135 waiver to last through the duration of the COVID-19 public health emergency and asks that the following flexibilities apply to all 102 counties in Illinois. HFS will modify, tighten, clarify, and manage all approved 1135 waiver flexibilities at its discretion to achieve their targeted intent during the COVID-19 emergency and limit any unintended consequences that may arise. HFS also intends to identify mechanisms to incentivize, encourage, facilitate, and potentially require alternative forms of service delivery (e.g., electronic and alternative communication), billing, monitoring, and quality control measures. Additionally, due to the evolving public health emergency, HFS may subsequently request the approval of additional flexibilities as additional needs are identified.

Provider Participation & Conditions for Payment

- Waive the requirement that physicians and other healthcare professionals are licensed in the State of Illinois to serve Illinois Medicaid beneficiaries within Illinois or out-of-state, so long as they have an equivalent license in another state or Veterans Affairs or are enrolled in Medicare;

- Waive the requirement that providers who order, refer, or prescribe to Medicaid beneficiaries be enrolled with Medicaid;
- Waive site visits to temporarily enroll a provider;
- Waive fingerprint requirements for providers designated as high-risk to temporarily enroll a provider;
- Suspend revalidation of Medicaid providers, allowing them to remain enrolled;
- For out-of-state providers, waive the limit on instances of care furnished and the limit on the number of participants who received care within a 180-day period;
- Extend the 180-day timely filing limit to two months from the end date of the public health emergency;
- Waive physical signature requirement for services via any method of delivery to the patient.
- Provide payments for services provided in alternative settings due to the public health emergency, including an unlicensed facility, including, but not limited to:
 - Providing coverage and reimbursement for large-scale screening, triage, and pre-clinical services outside the hospital setting;
 - Permitting treatment to occur in patient vehicles, assuming patient safety and comfort, to accommodate drive through specimen collection sites for COVID-19 and allow basic evaluation and treatment in patient vehicles in order to prevent potential spread of the virus to the facility;
 - Allowing payments to providers at mobile testing sites, temporary shelters or other care facilities, such as 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 individuals who test positive for COVID-19 or who have had a high-risk exposure and are thought to be in the incubation period, or to expand overall capacity to meet high demand; and
 - Allowing Federally Qualified Health Centers, Rural Health Centers, and Encounter Rate Clinics to bill for their encounter rate, or other permissible reimbursement, when providing services at alternative physician settings, such as a mobile clinic or temporary location for the period of the public health emergency.
- Allow facilities or alternate settings to receive Skilled Nursing Facility (SNF)/Nursing Facility or individuals with intellectual and developmental disabilities (ICF/DD) payment if a client is moved to a specialty facility to receive care and recover from COVID-19 during the COVID-19 crisis;
- Provide the option to reimburse providers for patient relocation costs if relocation is necessary due to the public health emergency, including providing full reimbursement to nursing facilities, ICF/IDDs, psychiatric residential treatment facilities, and hospitals for services rendered during an emergency evacuation to an unlicensed facility;
- Suspend enforcement of Emergency Medical Treatment and Labor Act (EMTALA) to the extent necessary to allow hospitals to screen or triage patients at a location offsite from the hospital's campus; transfer patients according to protocols that account for COVID-19 status, not just according to existing transfer requirements; and allow for the transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the COVID-19 public health emergency;
- Waive all Institutions of Mental Disease (IMD) requirements to maintain continuity of care for individuals in all care sites while awaiting other care sites that might not otherwise be available due to the emergency;
- Waive the requirement that Critical Access Hospitals limit the number of beds to 25, and that the length of stay be limited to 96 hours;
- Allow staffing levels that exceed established limits due to the public health crisis;
- Allow physicians whose privileges will expire and new physicians to practice before full medical staff/governing body review and approval to keep clinicians on the front line and allow hospitals and health systems to prioritize patient care needs during the emergency;

- Waive regulatory limitations on physician referral to allow hospitals to compensate physicians for unexpected or burdensome work demands (e.g., hazard pay), encourage multi-state systems to recruit additional practitioners from out-of-state, and eliminate a barrier to efficient placement of patients in care settings;
- Allow physicians to bill as the teaching physician when real-time audio video or access through a window is provided when hospitals are running low on supplies to limit the number of providers with direct patient contact;
- Waive the four-month rule and the full training requirements for the Training and Certification of Nurse Aids regulations during the public health emergency to fill critical Nurse aid positions with staff who have completed training and testing;
- Waive limitations on who can prescribe certain covered benefits, including broadening physician extenders, such as allowing nurse practitioners and physician assistants to prescribe without direct oversight by a physician when necessary due to the public health emergency;
- Allow home health agencies to perform certifications, initial assessments and determine patients' homebound status remotely or by record review to allow patients to be cared for in the best environment while supporting infection control and reducing impact on acute care and long-term care facilities. This allows those clinicians to focus on caring for patients with the greatest acuity during the public health emergency;
- Allow flexibility for hospitals in meeting Patient Self Determination Act Requirements to allow staff to more efficiently deliver care to a larger number of patients. This would not apply to the requirement hospitals inquire about the presence of an advance directive;
- Permit Medicaid payment for hospital outpatient observation services up to 48 hours, if not longer;
- Suspend two-week aide supervision requirement by a registered nurse for home health agencies;
- Suspend the supervision of hospice aides by a registered nurse every 14 days for hospice agencies;
- Suspend SNF bed hold timelines for SNF residents that are temporarily moved home or who go into a hospital;
- Allow non-emergency ambulance suppliers and non-enrolled Non-Emergency Medical Transportation (NEMT) providers when necessary;
- Allow reimbursement for atypical transportation providers such as Uber or Lyft if other transportation cannot be arranged;
- Allow for a new isolation and quarantine system to provide safe places for people who cannot quarantine at home;
- Allow emergency congregate assessment centers/recovery facilities to slow the spread;
- Provider flexibility under sterile compounding regulations to allow masks can be removed and retained in the compounding area to be re-donned and reused during the same work shift only. This will conserve scarce face mask supplies which will help with the impending shortage of medications.
- Allow for sheltering patients at non-certified facilities; and
- Allow for nutritional services, including healthy meals, to be provided to families who may not have access to meals during the period of social distancing;

Service Authorization and Utilization Controls

- Suspend prior authorization requirements for medical, behavioral health, and durable medical equipment services with the exception of bariatric surgery, gender affirming services, and hospital inpatient utilization review by the Department's Quality Improvement Organization;
- Allow post-screenings for Determination of Need (DON) and Preadmission Screening and Resident Review (PASRR) assessments as long as they are completed within 10 days of admission;

- Extend existing prior authorizations indefinitely during the duration of the public health emergency;
- Waive Durable Medical Equipment Prosthetics, Orthotics, and Supplies (DMEPOS) replacement requirements, including the face-to-face requirement, a new physician's order, and new medical necessity documentation. Suppliers must still include the reason the equipment must be replaced on the claim;
- Allow flexibility of documentation requirements, including but not limited to missing client signatures on treatment plans, and lack of documentation of consent for a telehealth consult; and
- Ease requirements on client signatures required for consents and treatment plans and allow a well-documented, witnessed verbal consent.

Pharmacy

- Cover over-the-counter products, analgesics and antihistamines used for symptomatic relief of fever, body aches, etc., for all Medicaid beneficiaries;
- Allow prescribers who are not enrolled with Medicaid to write prescriptions for Medicaid patients;
- Cover non-rebateable products if drug shortages occur; and
- Remove third-party liability rejections to allow more timely access to prescriptions; state will recover costs through a pay-and-chase model instead of a cost-avoidance model for these occurrences, and
- Waive Section 1927 of the Social Security Act requiring documentation of published studies documenting the safety and effectiveness of unlabeled medication use, or recommendations for use by experts in the disease field. HFS is requesting authority to cover and reimburse unlabeled medications shown to be safe and effective, but not yet having the required published documentation for use in COVID-19.

HIPAA

- Allow non-HIPAA compliant telehealth modes to allow providers to use readily available platforms, including Facetime, WhatsApp, Skype, etc., to facilitate a telehealth visit or check-in at the location of the patient, including the patient's home;
- Waive enforcement of patient rights related to personal privacy, confidentiality, orders for seclusion, and patient visitation rights to undertake public emergency responses that are not otherwise possible.
- Waive HIPAA sanctions and penalties arising from noncompliance with certain HIPAA privacy regulations, including: obtaining a patient's agreement to speak with family or friends or honoring a patient's request to opt out of the facility directory; distributing a notice of privacy practices; and/or the patient's right to request confidential communications; and
- Waive HIPAA electronic data interchange (EDI) code set requirements to provide flexibility to define and implement code sets not currently available in a standard federal code set or provide additional specificity to a code set definition to allow Illinois to track and set rates for services specific to COVID-19.

Appeal and State Fair Hearings

- Provide an extension to file appeals;
- Waive timeliness requests for additional information to adjudicate the appeal;
- Process the appeal with incomplete Authorized Representative forms with communication only to the beneficiary;
- Process requests for appeals that don't meet the required elements using information that is available;
- Utilize all flexibilities available in the appeal process as if good cause requirements are satisfied; and

- Allow enrollees to have more than 120 days (for managed care appeals) and more than 90 days (for eligibility or fee-for-service appeals) to request a State Fair Hearing (42 CFR 438.408(f)(2), SSA Section 1135)

Administrative Activities

- Provide expedited authorization for all State Plan Amendments (SPAs) that impact Medicaid reimbursements to providers and have expiration dates or effective dates during the period covered by the emergency declaration;
- Allow the state to draw federal financing match for payments, such as hardship or supplemental payments, to stabilize and retain providers of behavioral health and/or long term care settings (including home care workers), Federally Qualified Health Centers, Rural Health Centers, and Encounter Rate Clinics, who suffer extreme disruptions to their standard business model and/or revenue streams as a result of the public health emergency;
- Waive actuarial soundness for actuarially sound Medicaid managed care rates for calendar years 2020 and 2021 to allow smaller and more vulnerable providers, like behavioral health providers, Critical Access Hospitals, and Safety-net hospitals to be paid if they have not been able to perform services due to quarantine;
- Waive statewideness regulations to the extent necessary to allow the state to vary services and service delivery methods in geographic regions as appropriate for affected beneficiaries.
- Waive comparability regulations to the extent necessary to enable the State to deliver different services and service delivery methods to affected beneficiaries that are otherwise available to non-affected beneficiaries;
- Allow delayed submission of federal documents, including, but not limited to the Implementation Advanced Planning Document Update, monthly T-MSIS reporting, the External Quality Review (EQR) Technical Report, and the HFS quality strategy report;
- Allow delayed filing of CMS-64 and CMS-21 expenditure reports currently due April 30, 2020;
- Allow filing of the CMS-37 Budget Report prior to completion of QE 3-31-2020 CMS-64, if necessary, to receive Title XIX MAP20 grant award for FFY20 Q4;
- Amend the Treasury State Agreement under the Cash Management Improvement Act to allow for interest free Title XIX cash draws if drawn less than three days prior to warrant issuance;
- Allow delayed completion of External Quality Review Organization (EQRO) activities, including all site visits performed by the EQRO organizations and required network validation activities;
- Extend performance deadlines and timetables for required reporting and oversight activities;
- Modify deadlines for CMS Outcome and Assessment Information Set (OASIS) and Minimum Data Set (MDS) assessments and transmission;
- Extend minimum data set authorizations for Nursing Facility and Skilled Nursing Facility residents;
- For hospital medical records:
 - Allow verbal orders to be used more than 'infrequently' (read-back verification is done) and allow authentication to occur later than 48 hours to allow for more efficient treatment of patients in a surge situation; and
 - Allow medical records to be fully completed later than 30 days following discharge to allow clinicians to prioritize the care needs at hand under the public health emergency.
- Temporarily delay, modify, or suspend CMS-certified facilities' onsite survey, re-certification and revisit surveys conducted by the state survey agency, including related enforcement actions; allow additional time for facilities to submit plans of correction; and waive state performance standards and requirements through the end of the public health emergency; and
- Waive timeliness requirements related to triaging complaints and investigation of complaints in CMS-certified facilities unless it involves an immediate jeopardy or infection control, in which personal protective equipment (PPE) must be available for use by the surveyor/investigator.

Thank you for your prompt attention and assistance as HFS works to support providers and ensure beneficiaries have access to care throughout the COVID-19 public health emergency. Please reach out to Kelly Cunningham, Interim Medicaid Administrator, at Kelly.Cunningham@Illinois.gov or [REDACTED] if you have questions or need additional information.

Sincerely,

Theresa Eagleson
Director
Illinois Department of Healthcare and Family Services