



National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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Section 1135 Medicaid Waiver Authority – Oregon

Background

When the President of the United States declares a disaster or emergency under the Stafford Act or National Emergencies Act and the Department of Health and Human Services (HHS) Secretary declares a public health emergency under Section 319 of the Public Health Service Act, the HHS Secretary is authorized to use Section 1135 of the Social Security Act to modify certain Medicare, Medicaid, and Children’s Health Insurance Program (CHIP) requirements in order to allow states to respond to the emergency.

On March 25, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Oregon’s Section 1135 waiver, accessible [here](#).

On May 8, 2020, CMS approved Oregon’s 2nd Section 1135 waiver, accessible [here](#).

On August 20, 2020, CMS approved Oregon’s 3rd Section 1135 waiver, accessible [here](#).

On September 16, 2020, CMS approved Oregon’s 4th Section 1135 waiver, accessible [here](#).

On December 2, 2020, CMS approved Oregon’s 5th Section 1135 waiver, accessible [here](#).

On December 9, 2020, CMS approved Oregon’s 6th Section 1135 waiver, accessible [here](#).

This one-pager is meant to be a general guide and is not an exhaustive description of the waiver.

What does Oregon’s Section 1135 waiver look like?

The waiver makes several changes to Oregon’s Medicaid program, as outlined below:

Provider Enrollment

CMS authorized Oregon to expedite the enrollment of out of state providers who are not currently enrolled in the state’s Medicaid program. Oregon may continue to use existing procedures to enroll out of state providers who are already in the state’s Medicaid program (with one small exception, CMS is waiving the limit on claims within a 180 day period).

CMS has also authorized providers not currently enrolled in Medicare or another state’s Medicaid agency to temporarily enroll in Oregon’s programs. To make this possible, Oregon will be allowed to waive application fee



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requirements, criminal background checks, site visits, and state licensure requirements. However, the program provider must maintain an out of state license. To these temporarily authorized providers, Oregon must cease payment within six months of the emergency declaration being lifted, unless the providers submit an application for full participation in the program and are approved.

Pre-Approval Requirements

Oregon is also authorized to temporarily waive or modify pre-approval requirements for Medicaid procedures through its fee for service program.

Pre-Admission Screening and Annual Resident Review

Level 1 and 2 assessments can be waived for 30 days and all new admissions may be treated like exempt hospital discharges. While CMS is not setting a time frame for the completion of Resident Reviews, reviews should be completed on new admissions having a mental illness or intellectual disability diagnosis as soon as resources are available.

Allowing services in alternative settings

Pursuant to the waiver, Oregon may allow services to be provided in unlicensed settings, such as temporary shelters, when a provider's facility is not available. The state has to make a reasonable assessment that the facility meets minimum standards to ensure the health, safety, and comfort of beneficiaries and staff. The placing facility is responsible for determining reimbursements for the temporary setting.

State fair hearing requests and appeal deadlines

Oregon is approved to modify the timeline under which managed care enrollees can request an appeal of a denial of services. Enrollees may request a state fair hearing immediately, bypassing the requirement to exhaust all appeals with their managed care organization. Further, Oregon is authorized to waive the 120 day deadline for enrollees to file an appeal with the state, provided the 120 day deadline would have occurred during the period of the public health emergency. Managed care recipients in that situation will receive an additional 120 days to file their appeal for a state fair hearing.

Oregon also has the flexibility to allow recipients to have "more than 90 days" to request a state fair hearing for eligibility or fee for service issues.

1915(k) Community First Choice State Plan Option Level of Care Determination and Redetermination Timeline

Oregon can modify the deadline for conducting initial evaluations of eligibility and initial assessments of need to establish a care plan. These activities no longer have to be completed before the start of care. Services will continue until the assessment can occur.



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1915(i) HCBS State Plan Option Required Timeframe for Initial Evaluations and Assessments, and Re-evaluations and Reassessments

Oregon can modify the deadline for conducting initial evaluations of eligibility and initial assessments of need to establish a care plan. These activities no longer have to be completed before the start of care. Oregon may also modify the deadline for annual redetermination of eligibility and the annual reassessment of need. Services will continue under re-evaluation and reassessment can occur.

Conflict of Interest Requirements under HCBS State Plan and Waiver Authorities

Oregon may temporarily authorize reimbursement for Home and Community Based Services provided by an entity that also provides case management services and/or is responsible for the development of the person-centered plan in circumstances beyond what is currently allowed under existing regulations.

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

Oregon may temporarily wave written consent requirements for person-centered service plans. Providers are authorized to obtain documented verbal consent from the beneficiary and those responsible for its implementation.

1915(j) Self-Directed Personal Assistance Services (PAS) Program State Plan Option Required Timeframe for Reassessments and Service Plan Review

Oregon is allowed to modify the deadline for annual review of the service plan required for the 1915(j) plan. With this waiver, the annual review of the service plan that exceeds the 12-month authorization period will remain in place and services will continue until the annual review can occur. These actions may be postponed for up to one year.

1915(k) Community First Choice State Plan Option: Required Timeframe for Initial Assessments and Reassessments of Functional Need, and Annual Review of Person-Centered Service Plan

Oregon is allowed to modify the deadline for conducting initial assessments of functional need. With this waiver, the initial assessment of functional need is not required to be completed before the start of care. CMS is allowing the state to modify the deadline for annual reassessment of need required for the 1915(k) state plan benefit and for reviewing the person-centered service plan. With these waivers, the deadline for completing the annual reassessment of need and review of the person-centered service plan may be delayed beyond the end of the 12-month authorization period, and services will continue consistent with the current functional needs assessment and person-centered service plan until the reassessment and review can occur. These actions may be postponed for up to one year.

Use of Representatives to Render 1915(k) Services

Oregon is allowed to temporarily allow payment for 1915(k) attendant services and supports rendered by an individual's representative provided that the state makes a reasonable assessment that the caregiver is capable of



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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.

1905(a)(7) Home Health State Plan Services Face-to-Face Timeframes

Oregon may modify the deadline for the face-to-face encounter required for Home Health services. The face-to-face encounter does not need to be completed before the start of services and may occur at the earliest time, not to exceed 12 months from the start of service.

Private Duty Nursing

Oregon may allow Private Duty Nursing services to be delivered a graduate registered nurse and/or graduate licensed practical nurse. This flexibility allows the state to reimburse for services delivered by these providers whose practice is consistent with the functions of and requirements for registered nurses and licensed practical nurses but do not yet have the title “Registered Nurse” or “Licensed Practical Nurse”.

SPA Flexibilities: Tribal Consultation

Oregon has also been approved to modify the Tribal consultation period associated with any emergency SPA that they file to address COVID-19. This applies only to emergency provisions that will sunset at the end of the emergency. No guidance is given as to how much this period may be shortened.

How does this affect Tribes?

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. Oregon has nine federally recognized Tribes.



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Medicaid Disaster State Plan Amendment - Oregon

Background

The Medicaid State Plan is the foundational document for a state's Medicaid program; it sets the rules for eligibility, benefits, and payments. Before a state can participate in the Medicaid program, it must file a state plan with the Centers for Medicare & Medicaid Services (CMS). There are certain requirements that a state plan must adhere to and if a state wishes to deviate from these statutory requirements, they must seek a waiver (such as a Section 1115 or Section 1915 waiver) of the usual Medicaid rules. When a state wants to amend their State Plan, they have to file what is called a "State Plan Amendment" (SPA).

On April 24, 2020, Oregon was approved for an Emergency State Plan Amendment. You can find it [here](#).

On June 18, 2020, Oregon was approved for a 2nd Emergency SPA. You can find it [here](#).

On July 17, 2020, Oregon was approved for a 3rd Emergency SPA. You can find it [here](#).

On July 30, 2020, Oregon was approved for a 4th Emergency SPA. You can find it [here](#).

On August 4, 2020, Oregon was approved for a 5th Emergency SPA. You can find it [here](#).

On November 17, 2020, Oregon was approved for a 6th Emergency SPA. You can find it [here](#).

On January 14, 2021, Oregon was approved for a 7th Emergency SPA. You can find it [here](#).

All approvals are for the duration of the public health emergency unless otherwise stated.

Telehealth

Oregon is amending their State Plan to allow needs based eligibility criteria evaluations and re-evaluations, person-centered service plan development and completion, Home-Based Habilitation, HCBS Behavioral Habilitation, and Psychosocial Rehabilitation to be completed through telehealth. All pre-existing HIPAA restrictions are still in place.

Verbal Consent and E-Signatures

Oregon is amending their State Plan to allow for the usage of e-signatures to approve a Person-Centered service plan. The plan also authorizes verbal consent for providers to deliver services while waiting for a Person-Centered service plan.



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Inpatient Home and Community Based Services

Oregon is amending their State Plan to allow for the provision of Home and Community Based Services in an inpatient setting. The following conditions must be met:

- These services will be focused on providing personal, behavioral and communication supports not otherwise provided in an acute care hospital
- The service will only be delivered in the alternate setting for up to 30 days
- Identified in an individual's person-centered service plan (or comparable plan of care)
- Provided to meet needs of the individual that are not met through the provision of hospital services
- Not a substitute for services that the hospital is obligated to provide through its conditions of participation or under Federal or State law, or under another applicable requirement; and (f) designed to ensure smooth transitions between acute care settings and home and community based settings, and to preserve the individual's functional abilities.

They are also allowing the following provider types to provide Home-Based Habilitation and HCBS Behavioral Habilitation 1915(i) state plan services:

- Assisted Living Facility- Licensing requirements at OAR 411-054-0000 - 0300. The DHS Client Care Monitoring Unit is responsible for verification of provider qualifications at initial license and renewal (every 2 years);
- Group Care Homes and State Operated Group Homes for Adults - Licensing or Certification requirements at OAR 411-325-0010 through 411-325-0480. DHS Central Office is responsible for verification of provider qualifications biennially;
- Residential Care Facility- Licensing requirements at OAR 411-054-0000 - 0300. The DHS Client Care Monitoring Unit is responsible for verification of provider qualifications at initial license and renewal (every 2 years);
- APD and ODD Adult Foster Care - Licensing requirements at OAR 411-050-0600 – 0690 OAR 309-040-0030 through 309-040-0330; and 411-360-0010 through 411-360-0310. Branch offices, DHS Central Office, and OHA/HSD are responsible for verification of provider qualifications upon initial license and annual renewal.



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Presumptive Eligibility

Oregon is amending their State Plan in order to designate Contracted Community Partner organizations as qualified entities to make presumptive eligibility determinations.

State Residency

Oregon is amending their State Plan in order to consider individuals evacuated from the state due to the emergency and who plan to return to continue to be residents.

Prescription Drugs

Oregon is amending their State Plan in order to waive medication supply limits when appropriate to reduce exposure risk.

Mobile Testing

Oregon is amending their State Plan in order to allow for tests to be conducted in non-office settings such as parking lots.

Ambulance Rates

Oregon is amending their State Plan in order to temporary increase rates for Ambulance ‘treat in place’ services during the public health emergency.

1915(k) State Plan Benefits

Oregon is amending their State Plan to allow retainer payments for certain services in 1915(k) state plan benefits. The payments will help to ensure that providers can remain in business and available. In exchange however, the provider will have to make certain promises, such as promising not to lay off staff and maintaining wages at their current level.

Translators

Oregon is amending their State Plan to reimburse providers for interpreters required for limited and non-English speaking members and/or deaf/hard of hearing members, when these services are necessary and reasonable to communicate effectively with members regarding health needs.

IHS/Tribal 638 Payment Rates

Oregon is amending their State Plan to provide an enhanced PPS rate during the duration of the public health emergency. Each tribal 638/urban Indian health program’s enhanced PPS rate will be calculated and updated monthly and retrospectively and will be determined by dividing total Medicaid FFS billing for services rendered during the analogous calendar month in 2019 by the total number of Medicaid patient encounters during the current billing month” analogous with the 2019 reimbursement month.



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Questions?

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