



Office of the Secretary  
P.O. Box 1437, Slot S201  
Little Rock, AR 72203-1437  
P: 501.682.8650  
F: 501.682.6836  
TDD: 501.682.8820  
ERVICES.ARKANSAS.GOV

March 30, 2020

Calder Lynch and Jackie Glaze  
U.S. Department of Health & Human Services  
The Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

**REQUEST FOR SECTION 1135 WAIVER FLEXIBILITIES RELATED TO NOVEL CORONAVIRUS  
DISEASE (COVID-19) NATIONAL EMERGENCY/PUBLIC HEALTH EMERGENCY**

Dear Mr. Lynch and Ms. Glaze:

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).

Therefore, as authorized under Section 1135 of the Social Security Act, Arkansas Department of Human Services (DHS) respectfully requests waivers of certain federal Medicaid, CHIP, and HIPAA requirements in response to the COVID-19 outbreak and the corresponding public health emergency. As this outbreak and Arkansas' response remain fluid, these waivers will allow DHS to act and respond in a timely fashion and implement policies and procedures in the best interest of our residents and health care workers. The ability to be flexible and respond accordingly as more information becomes available allows us to place our members, residents, and healthcare workers in the best possible situation to address this outbreak in a proactive manner.

The purpose of this letter is to utilize most of the HHS-authorized blanket waivers and to seek additional waivers for CMS approval. As the need arises, we may subsequently request approval for additional flexibilities, which we will seek as soon as the need is discovered. Consistent with Section 1 of President Trump's March 13, 2020, national emergency declaration, and Secretary Azar's section 1135(b) authority invoked on March 13, 2020, DHS requests a retroactive effective date of March 1, 2020, unless otherwise noted, for the requested Section 1135 flexibilities to coincide with the effective start date of the Public Health Emergency, unless otherwise specified.

We appreciate your prompt approval of waivers of federal Medicaid, Medicare, CHIP and HIPAA requirements necessary for Arkansas to implement the below included actions to respond to the COVID-19 pandemic and health emergency. DHS thanks you for your flexibility and prompt attention during these difficult times.

Sincerely,

A handwritten signature in black ink that reads "Dawn Stehle". The signature is written in a cursive, flowing style.

Dawn Stehle,  
Medicaid Director



March 26, 2020

Calder Lynch and Jackie Glaze  
U.S. Department of Health & Human Services  
The Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

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Sincerely,

*(signed copy attached)*

Dawn Stehle,  
Medicaid Director

DHS 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 75 counties in Arkansas. DHS will manage all approved 1135 waiver flexibilities and will clarify all waivers for providers and members to achieve the targeted intent for each respective waiver.

**Arkansas intends to implement the following CMS COVID-19 Blanket Waivers:**

- Suspend pre-admission screening and annual resident review (PASRR) Level I and Level II Assessments for 30 days.
- Extend minimum data set authorizations for nursing facility and skilled nursing facility (SNF) residents.
- Allow managed care enrollees to proceed almost immediately to a state fair hearing without having a managed care plan resolve the appeal first by permitting the state to modify the timeline for managed care plans to resolve appeals to one day so the impacted appeals satisfy the exhaustion requirements.
- Allow flexibility on beneficiary deadlines for filing those appeals by a set number of days (e.g., an additional 120 days).
- Waive payment of application fee to temporarily enroll a provider, beginning on March 26, 2020.
- Waive fingerprint criminal background checks for high risk providers.
- Waive site visits to temporarily enroll high and moderate risk providers, beginning on March 26, 2020.
- Streamline provider enrollment requirements when enrolling providers, beginning with the effective date of this Waiver.
- Postpone deadlines for revalidation of providers who located in the state or otherwise directly impacted by the emergency.
- Waive requirements that physicians and other health care professionals be licensed in the state in which they are providing services, so long as they have equivalent licensing in another state, beginning with effective date of this Waiver.

**Arkansas requests the following additional waivers under Section 1135:**

HIPAA

- The requirements to obtain a patient's agreement to speak with family members or friends involved in the patient's care.
- The requirement to honor a request to opt out of the facility directory.
- The requirement to distribute a notice of privacy practices.
- The patient's right to request privacy restrictions.
- The patient's right to request confidential communications.
- Temporarily allow the use of non-HIPAA compliant telemedicine technologies.

Administrative Activities

- Modification of the requirement to submit any state plan amendments (SPAs) by March 31, 2020, to obtain a SPA effective date during the first calendar quarter of 2020.
- Waiver of requirements to meet timeliness standards for processing Medicaid applications.
- Allow for flexibilities in timeframes for appeals and grievances for both members and providers.

- Allow for flexibilities in provider documentation requirements, including but not limited to treatment plans, signature requirements, and consultation requests.
- Waiver of timeframes for submissions of various documents to CMS, including but not limited to MCO contracts, network adequacy standards, T-MSIS reports, and External Quality Review assessments and reports.
- Allow for a delay of CMS-37 and CMS-64 submissions. Any such delay will be brought to the attention of CMS as soon as possible.
- Waiver of the public notice under section 1135(b)(1)(C) of the Act. Arkansas will post this request and all relevant information regarding these changes on a public website, as well as share this information with various stakeholder groups, to promote public understanding of our initiatives related to COVID-19.

### Hospitals

- Waive the requirements that Critical Access Hospitals limit the number of beds to 25 and that the length of stay be limited to 96 hours.
- Waiver to allow acute care hospitals with excluded distinct inpatient psychiatric units that, as a result of a disaster or emergency, need to relocate inpatients from the excluded distinct part psychiatric unit to an acute care bed and unit.
- Waiver of requirements to allow acute care hospitals with excluded distinct inpatient Rehabilitation units that, as a result of a disaster or emergency, need to relocate inpatients from the excluded distinct part rehabilitation unit to an acute care bed and unit.
- Waiver of requirements to allow acute care hospitals to house acute care inpatients in excluded distinct part units, where the distinct part unit's beds are appropriate for acute care inpatient.
- Allow hospitals that do not have either a hospital based SNF or a swing bed unit to use their acute care beds to provide SNF level care.
- Allow hospitals to discharge patients who no longer need acute care based solely upon which post-acute providers can accept them without sharing the data requested by the regulators.
- Approve the use of technology and physical barriers that limit exposure and potential spread of the virus, such as use of video and audio resources for limiting direct contact between physicians and other providers in the same clinical facility.
- Permit basic evaluation, specimen collection, and treatment to occur in patient vehicles, assuming patient safety and comfort.
- Allow sterile masks to be removed and retained in the compounding area to be re-donned and reused during the same work shift only as long as personal protective equipment shortages exist.
- Allow verbal orders and authentication to allow for more efficient treatment of patients during surge situation.
- Allow ICU patients whose death is caused by their disease process but who required soft wrist restraints to prevent pulling tubes/IVs to be reported later than close of business next business day, provided any death where restraint may have contributed is continued to be reported within standard time limits.
- Permit physicians whose privileges will expire and new physicians to practice before full medical staff/governing body review and approval, provided that such review and approval would be secured at the next practical opportunity.
- Waiver of timelines for medical records to be fully completed after discharge.

- Allow flexibility in how the teaching physician is present with the patient and resident including real time-audio video or access through a window.

#### Skilled Nursing Facilities

- Allow for temporary emergency coverage of Skilled Nursing Facility services, without a qualifying hospital stay, for those people who need to be transferred as a result of the effect of a disaster or emergency.
- Waiver of the requirement at Section 1812(f) of the Social Security Act for a 3-day prior hospitalization for coverage of a skilled nursing facility stay.
- Allow for beneficiaries who recently exhausted their SNF benefits to receive renewed SNF coverage without first having to start a new benefit period.

#### Pharmacy

- Allow for 90-day supplies of medication at retail and mail-order pharmacies where clinically appropriate, as well as waivers of early refill requirements during public health emergencies.

#### Service Authorization and Utilization Controls

- Allow for expanded payment of telemedicine services.
- Allow for telemedicine to be used to meet the physician evaluation requirements, a new physician's order, and new medical necessity documentation for certain Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS).

#### Services and Supports to Combat COVID-19

- Waiver to temporarily suspend application of EMTALA sanctions for redirection of an individual to receive a medical screening examination in an alternative location or transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the declared emergency.
- FFP for IT Expenditures.

#### Provider Participation and Conditions for Payment

- Waiver of MCO requirements to complete credentialing of providers.
- Allow for payments of bundled rates for federal workers providing supplemental care.
- Allow telemedicine services to be provided at Rural Health Clinics.