

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



November 5, 2020

Marie Matthews
Medicaid & CHIP Director
Montana Department of Public Health & Human Services
P.O. Box 4210
Helena, Montana 59604

Re: Section 1135 Flexibilities Requested in November 2, 2020 Communication (Third Request)

Dear Ms. Matthews:

The Centers for Medicare & Medicaid Services (CMS) granted an initial approval to the State of Montana for multiple section 1135 flexibilities on March 30, 2020. Your follow-up communication to CMS on November 2, 2020 detailed a number of additional federal requirements that also pose issues or challenges for the health care delivery system in Montana 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 30, 2020 and June 23, 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.

This letter is in response to all requests submitted to CMS. If the state/territory determines that it has additional needs, please contact your state lead and CMS will provide the necessary technical assistance for any additional submissions.

Please contact Jackie Glaze, Deputy Director, Medicaid and CHIP Operations Group, at (404) 387-0121 or by email at 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 Montana and the health care community.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Marie Costello". The signature is written in a cursive, flowing style.

Anne Marie Costello
Acting Deputy Administrator and Director

STATE OF MONTANA
APPROVAL OF FEDERAL SECTION 1135 WAIVER REQUESTS

CMS Response: November 5, 2020

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

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

Pursuant to section 1135(b)(5) of the Act, CMS approves a waiver allowing the state to modify the deadline for conducting initial assessments of functional need as required under 42 C.F.R. §441.535. With this waiver, the initial assessment of functional need is not required to be completed before the start of care.

In addition, pursuant to section 1135(b)(5) of the Act, CMS is allowing the state to modify the deadline for annual reassessment of need required for the 1915(k) state plan benefit, as described in 42 C.F.R. § 441.535(c), and for reviewing the person-centered service plan as described in 42 C.F.R. § 441.540(c). 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.

Duration of Approved Waivers

Unless otherwise specified above, the section 1135 waivers described herein are effective March 1, 2020 and will terminate upon termination of the public health emergency, including any extensions. In no case will any of these waivers extend past the last day of the public health emergency (or any extension thereof).