

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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December 2, 2020

Lori Coyner  
Medicaid Director  
Oregon Health Authority  
500 Summer Street Northeast, E-15  
Salem, Oregon 97301-1079

Re: Section 1135 Flexibilities Requested in September 23, 2020 Communication (Second Request)

Dear Ms. Coyner:

The Centers for Medicare & Medicaid Services (CMS) granted an initial approval to the State of Oregon for multiple section 1135 flexibilities on March 25, 2020, May 8, 2020, August 20, 2020, and September 16, 2020. Your follow-up communication to CMS on September 23, 2020 detailed a number of additional federal requirements that also pose issues or challenges for the health care delivery system in Oregon and requested a waiver or modification of those additional requirements related to Oregon's Wildfires Public Health Emergency (PHE), declared on September 15, 2020. On November 24, 2020, the state of Oregon requested that the 1135 flexibilities from the September 23, 2020 communication apply to the COVID-19 PHE. 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 25, 2020, May 8, 2020, August 20, 2020, and September 16, 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>.

This letter is in response to all requests submitted to CMS. If the state 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](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 Oregon 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 style with a large initial "A" and "M".

Anne Marie Costello  
Acting Deputy Administrator and Director

STATE OF OREGON  
APPROVAL OF FEDERAL SECTION 1135 WAIVER REQUESTS

**CMS Response: December 2, 2020**

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

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

Pursuant to section 1135(b)(5) of the Act, CMS approves a waiver allowing the state to modify the deadline for the face-to-face encounter required for Home Health services, as described in 42 C.F.R. § 440.70(f)(1) and § 440.70(f)(2). With this waiver, 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**

Pursuant to section 1135(b)(1)(B) of the Act, CMS approves a waiver of 42 C.F.R. § 440.80(a) to allow Private Duty Nursing services to be delivered by 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”.

**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).