Healthcare 1135 Waiver Changes

ARTICLE 04.09.20 DEAN DORTON

Through sections 1135 and 1812(f) of the Social Security Act, the Centers for Medicare and Medicaid Services (CMS) along with state Medicaid plans can take proactive steps to reduce healthcare providers' regulatory burden during public health emergencies. CMS and the Kentucky Cabinet for Health and Family Services have used this ability to temporarily waive or change numerous regulatory requirements for hospitals, long term care facilities and many other healthcare providers.

Dean Dorton has compiled a list of changes applicable to hospitals under these programs:

CMS 1135 – Federal Changes

Source

Hospital Service Impacted	Change
QAPI	Wavies the requirement that hospitals provide details on the scope, incorporation and setting priorities of the QAPI program. CMS still expects hospitals to maintain an effective, ongoing, hospital-wide and data-driven QAPI program.
Nursing Services	Waives the requirement to keep a current nursing plan for each patient and the requirement that hospitals have policies and procedures which establish which outpatient departments are not required to have registered nurses present.
Food/Dietetic Services	Waives the requirement to have a current therapeutic diet manual approved by the dietitian and medical staff readily available to all medical, nursing and food service personnel at surge capacity sites.
Respiratory Care Services	Waives the requirement that hospitals designate in writing the personnel qualified to perform specific respiratory care procedures and the amount of supervision required.

Other Provider Types – Approved Changes

Facilities Impacted	Change
SNFs	Waives Requirement for Qualifying 3-Day Stays
SNFs	Certain beneficiaries with Part A stays exhausted will have coverage extended
CAHs	Waiving 25 bed limit and 96 hour LOS average
CAHs	Personnel Qualifications. Waives minimum qualifications for NPs, PAs and clinical nurse specialists to provide maximum staffing flexibility.
CAHs	Staff Licensure. Deferring to state law regarding staff licensure, certification, or registration. Provides maximum flexibilty to facilities to use all available clinicans.
DPUs	Acute care inpatients can be housed in appropriate beds in Distinct Part Units
DMEs	Waives certain requirements for replacement/repair coverage, namely: face-to-face requirement, new physician order, and new medical necessity documentation **Note:** Suppliers must still include a narrative description on the claim explaining the reason why the equipment must be replaced and that DMEPOS was lost, destroyed, irreparably damaged or otherwise rendered unusable or unavailable as a result of the emergency

Facilities Impacted	Change
LTCHs	LTCHs may exclude patients treated in LTCH setting to meet the demands of the emergency from the 25-day ALSO requirement.
HHAs	Provides relief on timeframes related to OASIS transmission. Allows MACs to extend the auto-cancellation date of RAPs during emergencies.
Provider Locations	Temporarily waive requirements that out-of-state providers be licensed in the state where they are providing services when they are licensed in another state. Applies to Medicare and Medicaid
Provider Enrollment	– Establish a toll-free hotline for non-certified Part B suppliers to enroll and receive temporary Medicare billing privileges – Waives application fees, CBCs associated with FCBC, site visits – Postpone revalidation efforts – Allow licensed providers to render services outside of their state of enrollment – Expedite any pending or new applications from providers
Medicare Appeals	– Extension to file an appeal – Waive timeliness for requests for additional info to adjudicate appeal – Other changes

Kentucky 1135 Waiver – Approved Changes

Source

All	**Medicaid Fee-For-Serivce Prior Authorization requirements temporarily suspended.**
Long Term Care	Suspend Pre-Admission Screening and Annual Resident Review (PASRR) Level I and II Assessments for 30 days.
All	Temporarily delays schedules of Medicaid fair hearings. Also allows a mechanism for patients covered by an MCO to effectively bypass the MCO's appeals process and move immediately to a state fair hearing.

All	**Medicaid Fee-For-Serivce Prior Authorization requirements temporarily suspended.**
Provider Enrollment	– KY may rely upon the screening of Medicare or other State Medicaid Agencies to provide temporary enrollment to providers enrolled with another SMA or Medicare. – KY may reimburse out of state providers not enrolled in KY Medicaid, given certain criteria. – KY may temporarily enroll providers for the duration of the public health emergency without: 1. Receiving payment of the application fee. 2. Performing criminal background check. 3. Performing site visits. 4. Enforcing in-state licensure requirments. **Note:** these temporarily enrolled providers must meet other minimum requirements for reimbursement.
Long Term Care/ICFs/IDDs	Allows facilities to be fully reimbursed for services rendered to an unlicensed facility (during an emergnecy evacuation or due to other need to relocate residents where the placing facility continues to render services) provided that the State makes a reasonable assessment that the facility meets minimum standards, consistent with the context of the public health emergency. The placing facility would be responsible for reimbursing the unlicensed facility.
Duration of Waivers	Effective from March 1, 2020 through the termination of the public health emergency. Some appeals and claim processing items have time periods longer than this.

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COVID-19 Resources