

Oregon waiver or modification of requirements under section 1135 of the social security act

The President's declared that an emergency exists in the State of Oregon and ordered Federal assistance to supplement State, tribal, and local response efforts due to the emergency conditions resulting from wildfires beginning on September 8, 2020, and continuing.

The President's declaration of an emergency related to Oregon's wildfires give the Secretary of Health and Human Services authority pursuant to Section 1135 of the Social Security Act to temporarily modify or waive certain Medicare, Medicaid, Children's Health Insurance Program ("CHIP"), and Health Insurance Portability and Accountability Act ("HIPAA") requirements in the declared Oregon emergency or disaster ("1135 Waiver"). The Secretary declared a Public Health Emergency in Oregon related to the wildfires on September 16, 2020, retroactive to September 8, 2020.

CMS has stated that Oregon's currently approved 1135 waiver and Disaster SPAs for COVID-19 flexibilities can also be utilized for the wildfire disaster, without notification to CMS or request to CMS. To the extent notification or request is required, Oregon hereby requests it. Oregon requests additional temporary modifications and waivers to certain Medicare, Medicaid, CHIP, and HIPAA requirements, as set forth below

One purpose of this 1135 waiver is to give Oregon Medicaid and CHIP the maximum flexibility to make necessary changes as circumstances related to this emergency dictate without the need to submit proposed changes to CMS for approval. This flexibility ensures continued access to needed services and the ability to maintain an adequate pool of providers, while enabling providers to furnish needed items and services in good faith during times of disaster and be reimbursed and exempted from sanctions (absent any determination of fraud or abuse).

To the extent CMS asserts that any of its requests for flexibility cannot be approved under Section 1135 but can be approved under Section 1115 of the Social Security Act, Oregon requests that this waiver application also be treated as an application for an emergency Section 1115 demonstration.

All requirements of Oregon's Medicaid and CHIP program expressed in law, regulation and policy statement, not expressly waived in this list or other approved waivers, shall apply.

1. Provider participation, billing requirement and conditions for payment:
 - a. Waiver/flexibility to allow evacuating facilities (such as, but not limited to, Intermediate Care Facilities for the Developmentally Disabled or Skilled Nursing Facilities, ALF, RCF, GCH, RTF, RTH, SRTF, SCIP SAIP) to receive payments for services

provided to affected beneficiaries in alternative physical settings, such as temporary shelters or other care facilities.

- b. Waiver/flexibility to allow Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) providers to bill for their Prospective Payment System (PPS) rate, or other permissible reimbursement, when providing services from alternative physical settings, such as a mobile clinic or temporary location in the event the clinic facility was damaged or destroyed.
- c. Waiver of limitations on who can prescribe certain covered OHP benefits, such as: home health services (42 CFR §440.70, to allow licensed practitioners to prescribe services such as DME, medical supplies, enteral nutrition and home health agency services instead of only a physician; physical, occupational and speech therapies (42 CFR §440.110, to allow licensed practitioners to prescribe); orthotics and prosthetics (42 CFR §440.120, to allow licensed practitioners to prescribe within their scope of practice, etc.
- d. Waiver of 1905(a)(7) Home Health state plan services and 42 CFR 440.120 Prosthetic devices and equipment's face-to-face timeframes/requirements
- e. Waiver to allow the use of non-emergency medical transportation (431.53 & 440.170) for OHP recipients that require transportation due to wildfire evacuations to a shelter or other facility housing evacuees and/or back to home once evacuation orders cease.
- f. Waiver to allow Private Duty Nursing services to be delivered by a graduate registered nurse and/or graduate licensed practical nurse.
- g. Waiver to allow flexibility to reimburse hazard abatement services and items necessary for the individuals health and safety such as heavy cleaning to remove hazardous debris or dirt in the home, repairs, and yard hazard abatement to ensure the outside of the home is safe for the individual to traverse and enter and exit the home. All hazard abatement services must be completed by licensed and bonded providers.

2. Service authorization and utilization controls:

Waiver of prior authorization requirements for accessing covered State plan and waiver benefits in recognition of various circumstances which makes submission of medical necessity documentation difficult, impractical or impossible. Such circumstances include but are not limited to: relocation of OHP beneficiaries; damage to or destruction of prescription medications, prosthetics, Durable Medical Equipment (DME), dentures, and other covered items; loss of or damage to pharmacy and/or medical records; damage to or destruction of health care facilities and/or resources provided by the facilities (pharmacies, medical offices, clinics, public health facility, etc.); relocation of pharmacy staff, primary care

prescribers and staff, and/or specialty prescribers and staff in the affected areas. During the authorized period, OHA will process the claims without regard to prior authorization requirements or documentation for medical necessity of the service.

3. Expenses not otherwise matchable:

Reimbursement for air filtration/purification devices that necessary for health and safety due to the hazardous air conditions caused by the wildfires

4. Other:

- a. Housing supports/community transitions- Use Medicaid-matched dollars to assist members who do not have insurance, FEMA or other available resources to cover these types of expenditures, whose homes have been destroyed with re-establishing residences such as security deposits, essential household furnishings and moving expense required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bed/bath linens; set-up fees or deposits for utility or service access, including telephone, electricity, heating and water; services necessary for the individual's health and safety such as one-time cleaning prior to occupancy; moving expenses; necessary home accessibility adaptations, etc.
- b. Temporarily reassign state and local public health department or agency personnel funded in whole or in part through programs authorized under the PHS Act to immediately address a public health emergency in the state or Indian tribe during the period of the emergency.
- c. Waive certain requirements of the Drug Supply Chain Security Act (DSCSA). A public health emergency is considered an "emergency medical reason" under the DSCSA, 21 U.S.C. 360eee. Thus, upon the Secretary's declaration of a public health emergency, certain activities are automatically excluded through the time period of the declaration.
- d. Limit liability of health care professionals who are members of the Medical Reserve Corps or professionals included in the Emergency System for Advance Registration of Volunteer Health Professionals responding to a PHE in the initial 90 days.