

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



August 20, 2020

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

Re: Section 1135 Flexibilities Requested in April 17, 2020 COVID-19 1115 Application

Dear Ms. Coyner:

The Centers for Medicare & Medicaid Services (CMS) granted an approval to the State of Oregon for multiple section 1135 flexibilities on March 25, 2020 and May 8, 2020. In addition, your COVID-19 1115 application to CMS on April 17, 2020 detailed a number of additional federal requirements that also pose issues or challenges for the health care delivery system in Oregon and requested approval of those additional components. Attached, please find a response to one of your requests as submitted in your COVID-19 1115 application which is now approvable, 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 and May 8, 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>.

CMS continues to work on the additional waiver or modification requests that are not currently reflected in the attached approval. For those waiver or modification requests that require approval under authority other than section 1135, such as under applicable regulations, through an amendment to the state plan, or through a section 1115 demonstration, my staff will continue to work with your team to review and make determinations regarding approval as quickly as possible.

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 Oregon and the health care community.

Sincerely,

A handwritten signature in black ink, appearing to read "Calder Lynch". The signature is stylized and cursive, with a large initial "C" and a long, sweeping tail.

Calder Lynch
Deputy Administrator and Director

STATE OF OREGON
APPROVAL OF FEDERAL SECTION 1135 WAIVER REQUESTS

CMS Response: August 20, 2020

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

**1915(j) Self-Directed Personal Assistance Services (PAS) Program State Plan Option
Required Timeframe for Reassessments and Service Plan Review**

Pursuant to section 1135(b)(5) of the Act, CMS is allowing the state to modify the deadline for annual review of the service plan required for the 1915(j) state plan benefit, as described in 42 C.F.R. §441.468(c)(7). With this waiver, the annual review of the service plan that exceeds the 12-month authorization period will remain in place and services will continue until the annual 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).