

# NEBRASKA

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DEPT. OF HEALTH AND HUMAN SERVICES



Pete Ricketts, Governor

March 30, 2020

Jackie Glaze  
Acting Director  
Medicaid and CHIP Operations Group Center  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244-1850

Dear Ms. Glaze:

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 Social Security Act (Act).

The State of Nebraska requests that certain statutes and implementing regulations be waived by the Centers for Medicare and Medicaid Services (CMS), pursuant to section 1135 of the Act. The authorities requested in this section 1135 application reflect the state's current view of the flexibilities needed to ensure Medicaid services continue to be delivered in a safe and effective manner. As additional federal guidance is provided and as the situation in our state continues to evolve, Nebraska may seek to amend this 1135 waiver to ensure the Medicaid program, our providers, and our beneficiaries maintain the necessary flexibility to respond to this unprecedented public health crisis.

Thank you for your consideration of this request.

A handwritten signature in blue ink, appearing to read "Jeremy Brunssen".

Jeremy Brunssen  
Interim Director, Division of Medicaid and Long-Term Care  
Nebraska Department of Health and Human Services

**Section 1135 Waiver COVID-19  
State/Territory Request Template**

**Introduction**

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 Social Security Act (Act). On the same day, pursuant to section 1135 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 to mitigate the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (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 Daylight Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and waivers will no longer be available, upon termination of the public health emergency, including any extensions.

States/territories can request approval that certain statutes and implementing regulations be waived by CMS, pursuant to section 1135 of the Act. The following list includes some of the temporary flexibilities available to CMS under section 1135 of the Act. Please check the box on the flexibilities that the state/territory is requesting. Please include any additional flexibilities that the state/territory is requesting under the section 1135 waiver authority under “Number 6 – Other Section 1135 Waiver Flexibilities”.

Please complete the following fields:

**State/Territory Name:**                    **Nebraska**

**Contact Name:**                            **Jeremy Brunssen**

**Contact Title and Agency:**            **Interim Director, Division of Medicaid and Long-Term Care**

**Email:**                                        **Jeremy.Brunssen@nebraska.gov**

**Phone:**                                        **402-471-5046**

**Date Submitted:**                          **March 30, 2020**

### 1) Medicaid Authorizations:

- Suspend Medicaid fee-for-service prior authorization requirements. Section 1135(b)(1)(C) allows for a waiver or modification of pre-approval requirements if prior authorization processes are outlined in detail in the State Plan for particular benefits
- Require fee-for-service providers to extend pre-existing authorizations through which a beneficiary has previously received prior authorization through the termination of the emergency declaration

### 2) Long Term Services and Supports

- Suspend pre-admission screening and annual resident review (PASRR) Level I and Level II Assessments for 30 days
- Extend minimum data set authorizations for nursing facility and skilled nursing facility (SNF) residents

### 3) Fair Hearings

- Allow managed care enrollees to proceed almost immediately to a state fair hearing without having a managed care plan resolve the appeal first by permitting the state to modify the timeline for managed care plans to resolve appeals to one day so the impacted appeals satisfy the exhaustion requirements
- Give enrollees more than 120 days (if a managed care appeal) or more than 90 days (if an eligibility for fee-for-service appeal) to request a state fair hearing by permitting extensions of the deadline for filing those appeals by a set number of days (e.g., an additional 120 days)

### 4) Provider Enrollment

- Waive payment of application fee to temporarily enroll a provider
- Waive criminal background checks associated with temporarily enrolling providers
- Waive site visits to temporarily enroll a provider
- Permit providers located out-of-state/territory to provide care to an emergency State's Medicaid enrollee and be reimbursed for that service
- Streamline provider enrollment requirements when enrolling providers

- Postpone deadlines for revalidation of providers who are located in the state or otherwise directly impacted by the emergency
- Waive requirements that physicians and other health care professionals be licensed in the state in which they are providing services, so long as they have equivalent licensing in another state
- Waive conditions of participation or conditions for coverage for existing providers for facilities for providing services in alternative settings, including using an unlicensed facility, if the provider's licensed facility has been evacuated

**5) Reporting and Oversight**

- Modify deadlines for OASIS and Minimum Data Set (MDS) assessments and transmission
- Suspend 2-week aide supervision requirement by a registered nurse for home health agencies
- Suspend supervision of hospice aides by a registered nurse every 14 days' requirement for hospice agencies

**6) Other Section 1135 Waiver Flexibilities.** Please include any additional flexibilities that the state/territory is requesting under the Section 1135 waiver authority:

The State of Nebraska requests authority to waive public notice requirements for Medicaid state plan amendments (SPAs) related to COVID-19 and authority to modify tribal consultation timeframes to include the shortening of the number of days prior to submission or conducting consultation after submission of the SPA.

The State of Nebraska requests a modification of the requirement to submit the SPA by March 31, 2020, to obtain a SPA effective date during the first calendar quarter of 2020, pursuant to 42 CFR 430.20.

**7) Statement of Intent**

- a. Nebraska's intent as to prior authorizations in Section 1 is to provide implementation guidance to providers regarding the specific fee-for-service prior authorization requirements that are being relaxed for the duration of the emergency.
- b. Nebraska's intent as to PASRR screenings in Section 2 is to exercise flexibility on the timeframe for completing PASRR renewals for 30 days. New PASRR assessments will continue to be completed at admission.
- c. Nebraska's intent as to site visits for providers in Section 4 is to waive current provider screening and enrollment site visit requirements for the duration of the emergency.
- d. Nebraska's intent as to revalidation in Section 4 is to temporarily pause revalidation of Nebraska Medicaid providers.
- e. Nebraska's intent as to licensing in Section 4 is to temporarily allow providers not licensed in Nebraska but who hold an equivalent license in another state to enroll as a Nebraska Medicaid provider for the duration of the emergency.
- f. Nebraska's intent as to alternative setting in Section 4 is to provide implementation guidance to providers on policies and procedures for utilizing an alternative setting in an instance of an evacuation of a licensed facility.