

(3.27.20) The following information is sent on behalf of the Brown & Weinraub healthcare team:

<https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/federal-disaster-resources/?entry=54067>

New York's application to the federal government to waive certain Medicaid and Medicare requirements was granted last night. The 1135 Waiver waives or modifies certain Medicaid and Medicare rules to "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."

CMS did not individually address NYS's requests that were already covered in CMS's current blanket waiver (primarily affecting requirements for individual facilities, such as hospitals, long term care facilities, home health agencies, etc.).

*Also, CMS may be continuing to work on requests from NYS not included below or in the blanket waiver.*

**Temporarily suspend Medicaid fee-for-service prior authorization requirements. Section 1135(b)(1)(C) allows for a waiver or modification of pre-approval requirements, including prior authorization processes required under the State Plan for particular benefits.**

Approved.

**Extend pre-existing authorizations for which a beneficiary has previously received prior authorization through the end of the public health emergency.**

Approved for beneficiaries with a permanent residence in the geographic area of the public health emergency declared by the Secretary.

**Suspend Pre-Admission Screening and Annual Resident Review (PASRR) Level I and Level II Assessments for 30 days**

Approved. "All new admissions can be treated like exempted hospital discharges. After 30 days, new admissions with mental illness (MI) or intellectual disability (ID) should receive a Resident Review as soon as resources become available."

"[N]ew preadmission Level I and Level II screens are not required for residents who are being transferred between nursing facilities (NF). If the NF is not certain whether a Level I had been conducted at the resident's evacuating facility, a Level I can be conducted by the admitting facility during the first few days of admission as part of intake and transfers with positive Level I screens would require a Resident Review. The 7-9-day timeframe for Level II completion is an annual average for all preadmission screens, not individual assessments, and only applies to the preadmission screens (42 C.F.R. §483.112(c)). There is not a set timeframe for when a Resident Review must be completed, but it should be conducted as resources become available."

**State Fair Hearing Requests and Appeal Timelines**

Approved in part.

- Fee for service: allows enrollees to have more than 90 days, up to an additional 120 days for an eligibility or fee for service appeal to request a fair hearing.

- Managed care: Extends timelines to request and hold an appeal.

### **Provider Enrollment (Medicaid, Medicare, Child Health Plus)**

Authorizes NYS to provisionally, temporarily enroll providers who are enrolled with another State Medicaid Agency or Medicare for the duration of the public health emergency.

Under current CMS policy, New York is allowed to reimburse otherwise payable claims from out-of-state providers not enrolled in New York Medicaid program if certain criteria are met, and CMS is now waiving the requirement that the claim represents either a single instance or multiple instances of care furnished over a 180-day period.

“If a certified provider is enrolled in Medicare or with a state Medicaid program other than New York, New York may provisionally, temporarily enroll the out-of-state provider for the duration of the public health emergency in order to accommodate participants who were displaced by the emergency.”

For providers not already enrolled in Medicare or another State’s Medicaid plan,

A. CMS will now waive the following screening requirements:

1. Payment of the application fee - 42 C.F.R. §455.460
2. Criminal background checks associated with Fingerprint-based Criminal Background Checks - 42 C.F.R. §455.434
3. Site visits - 42 C.F.R. §455.432
4. In-state/territory licensure requirements - 42 C.F.R. §455.412

B. For this group of providers, NYS meet certain information/data collection requirements

CMS also approved New York’s request to temporarily cease revalidation of providers who are located in New York or are otherwise directly impacted by the emergency.

### **Provision of Services in Alternative Settings**

Facilities, including SNFs, intermediate care facilities for individuals with intellectual and developmental disabilities (ICF/IDDs), psychiatric residential treatment facilities (PRTFs), and hospital SNFs, can be fully reimbursed for services rendered to an unlicensed facility provided that the State makes a reasonable assessment that the facility meets minimum standards. “The placing facility would be responsible for determining how to reimburse the unlicensed facility.”

### **Duration of Approved Waivers**

Unless otherwise specified, effective retroactively to March 1, 2020 and will terminate upon end of the public health emergency.