

California's Emergency Medicaid Waivers for COVID-19 Support

Overview &
Implications for
COVID-19 Support



Public Health Alliance™
OF SOUTHERN CALIFORNIA

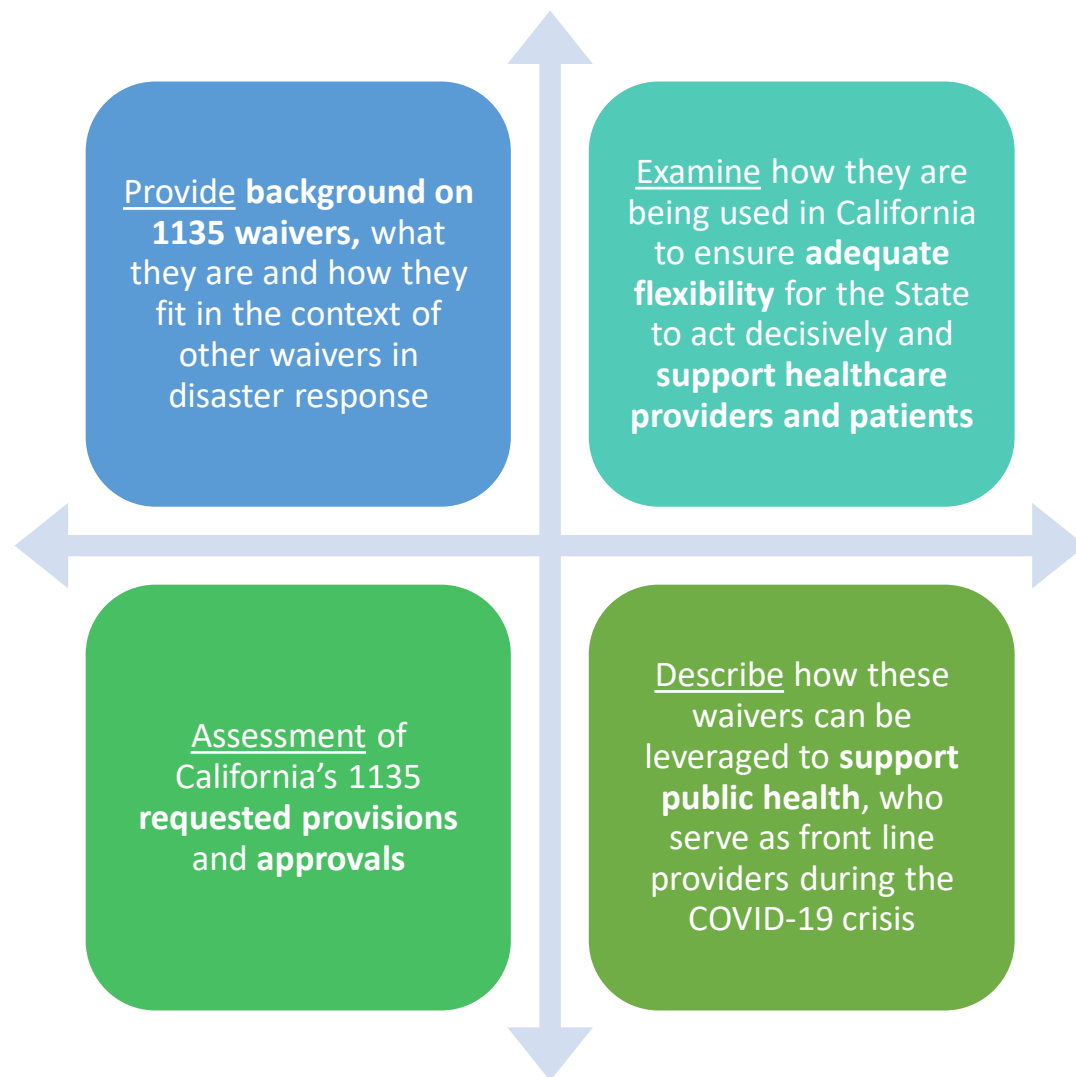
April 13, 2020

Purpose

This presentation reviews the various Medicaid waiver authorities requested by the California Department of Health Care Services (DHCS) in light of the COVID-19 pandemic, with a focus on 1135 waivers as a primary vehicle. The purpose of these waivers is to address barriers to care or generate additional resources.

These emergency authorities are available to states via Medicaid 1135, 1115(a) and 1915(c) waivers upon application and subject to federal review. DHCS has submitted three 1135 waiver requests, as well as an 1115(a), 1915(c) and a State Plan Amendment (SPA). The Centers for Medicare and Medicaid (CMS) has also approved an emergency blanket waiver that does not require state application.

Not all of the authorities requested by DHCS has been approved by CMS. **None have been explicitly denied.** We focus on what is clearly approved in this presentation, but provide additional detail on other DHCS actions to provide context.



Methods of Obtaining Federal Flexibility During Times of Crisis

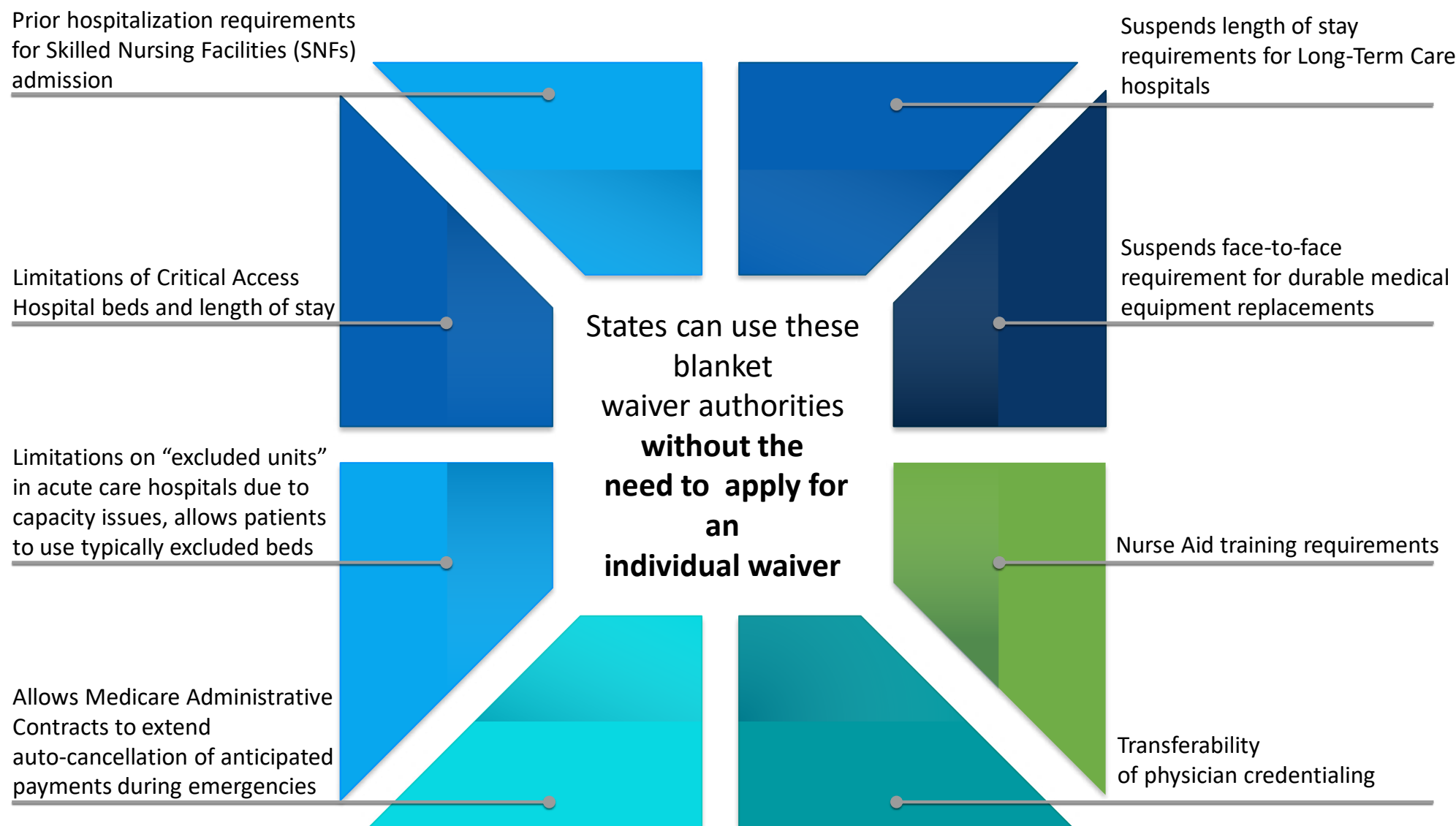
CMS Federal Blanket Waiver

- Blanket waivers are emergency waivers to federal regulations that CMS puts in place during times of crisis, such as a public health emergency.
- The blanket waiver provisions apply to Medicaid, Medicare and the Children's Health Insurance Program (CHIP).
- States can automatically enact the flexibilities under the blanket waiver and do not need to submit applications to CMS.

State Specific Waiver Options

- Besides the federal Blanket Waiver, states can request additional state-specific flexibilities for emergencies.
- This can be done through 1135 waivers, 1115(a) emergency waivers, 1915(c) Appendix K waivers and State Plan Amendments.
- This deck focuses on what California has applied and gotten approval for, mainly 1135 and 1915(c) waiver provisions.

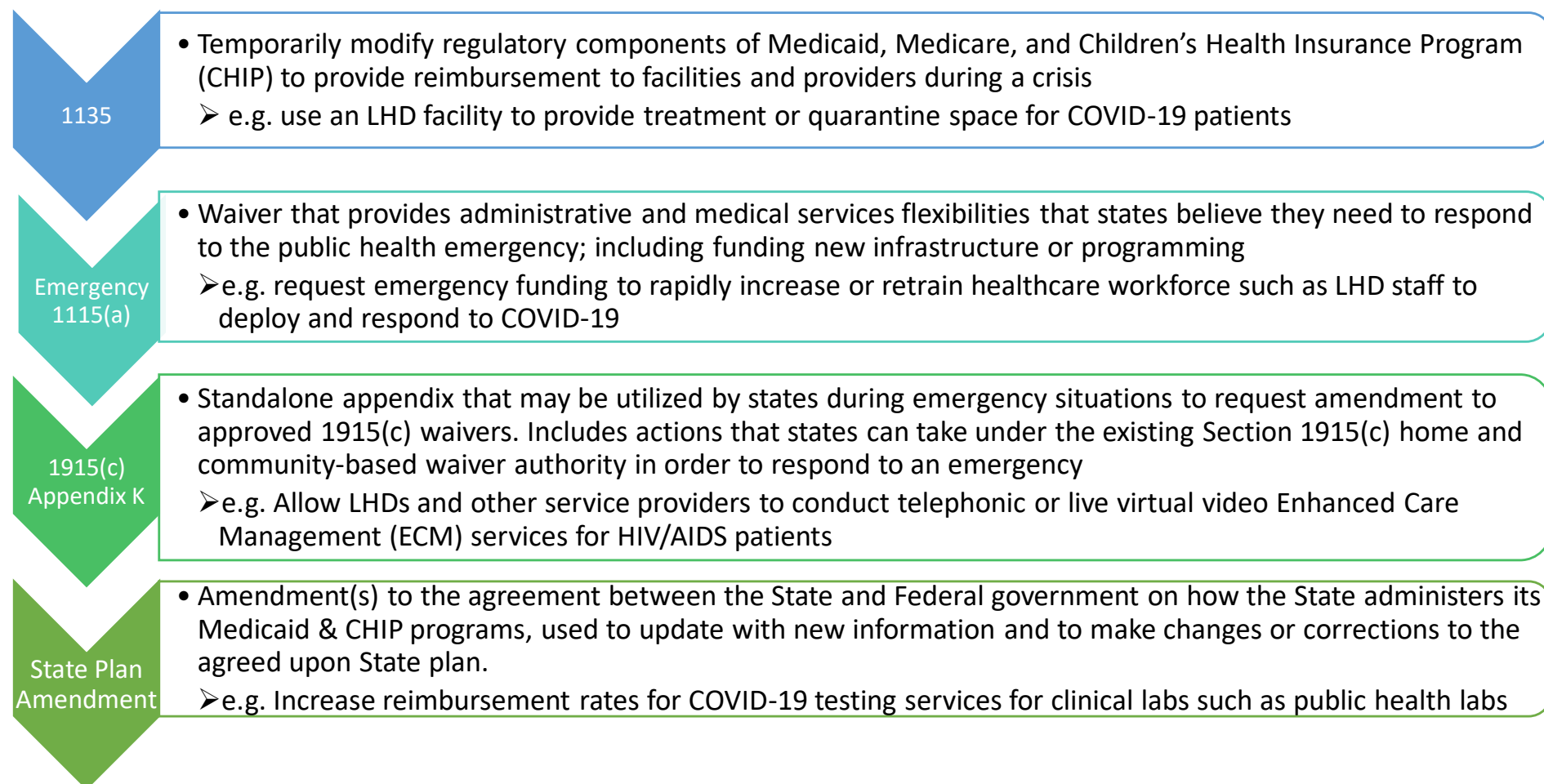
What is in the federal Blanket Waiver?



¹ Blanket waivers are standing 1135 waivers to federal regulations that states can exercise flexibility under, but do **not** need to apply for an individual waiver.

Federal Waivers States Can Request for Disaster Response

Below is a description of the various types of Medicaid waivers available to states for disaster response. All of these require the state to submit a request to CMS, and are different than the blanket waiver, which does not require state action.



¹ Currently California has an **approved** [1135 waiver](#), as well five **approved** [1915\(c\) Appendix K approvals](#).

² In addition, California has two additional **pending** [1135 waiver](#), a **pending** [emergency 1115\(a\) waiver](#), and a **pending** [State Plan Amendment](#) waiver.

What are 1135 Waivers?

Trigger Points:

1135 Waivers are used when the President declares a disaster or state of emergency under the following conditions;

- The Stafford Act¹
- The National Emergencies Act²
- Upon the Health and Human Services (HHS) Secretary declaring a public health emergency under Section 319 of the Public Health Service Act.

Purpose:

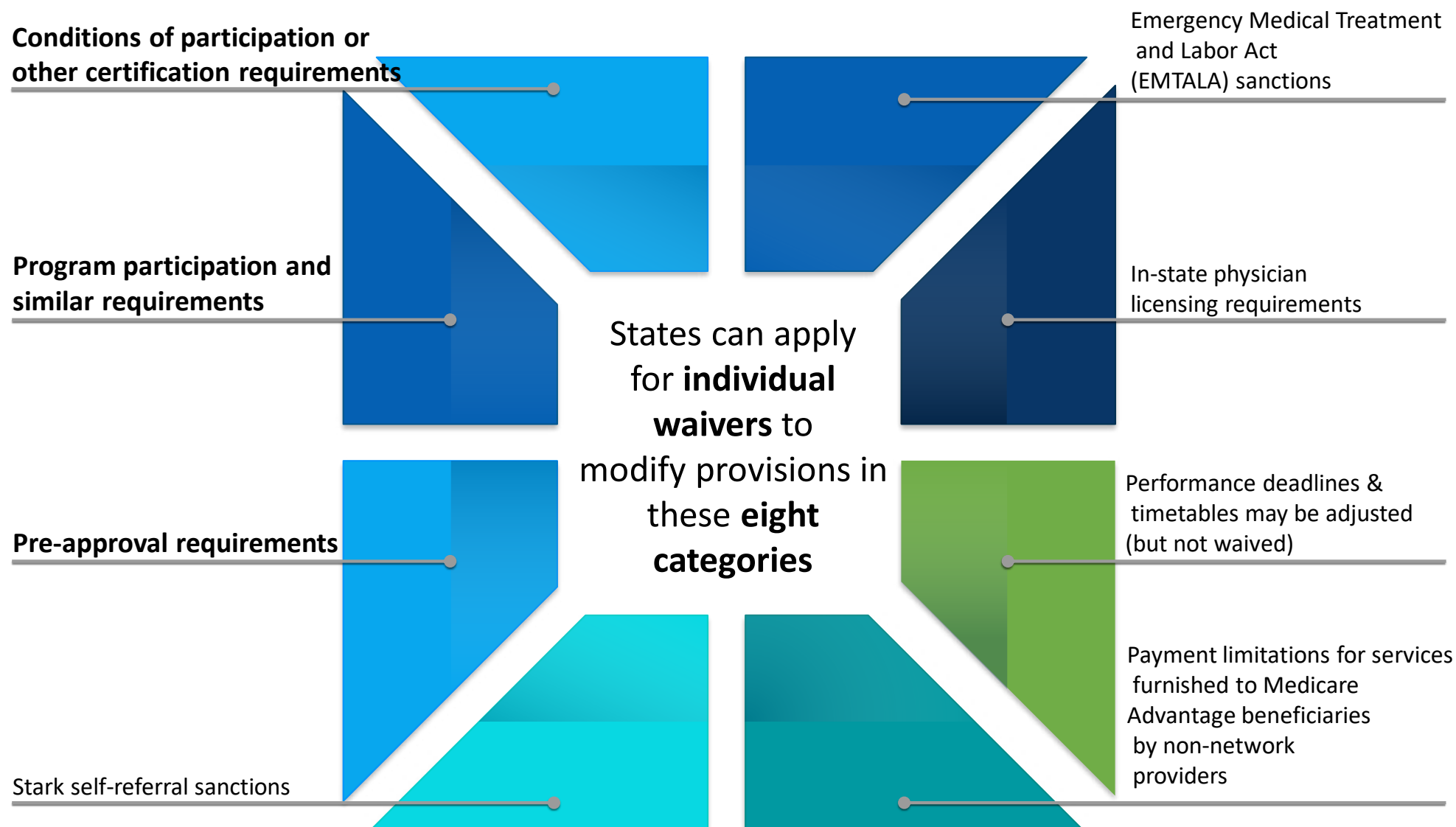
1135 Waivers are used to temporarily modify components of Medicare, Medicaid, and CHIP

- Reimbursing providers that furnish medical assistance to beneficiaries in good faith
- Exemption from sanctions that might otherwise be in place during a non-emergency situation.

¹ The Stafford Act is intended to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters.

² The National Emergencies Act allows the President to end all previous national emergencies and formalize the emergency powers of the President.

What can be asked for in 1135 Waivers?



¹ These modifications are examples from CMS that states can ask for through **individual** applications. CMS also has released blanket waivers (see reference list) that are standing waivers to federal regulations that states can exercise flexibility under, but do *not* need to apply for an individual waiver.

What did CA ask for in its three 1135 waiver requests?

Flexibility Category Requested	Definition	# Provisions
Provider Participation, Billing Requirements, & Conditions for Payment	Allows providers to temporarily enroll to serve Medicaid patients without screening requirements or in-state licensing requirements	11
Services Authorization & Utilization Controls	Relaxes authorization requirements for beneficiary's medical equipment, and prior authorization requirements for length of stay and acuity of patients for transfer	19
Flexibilities on State Fair Hearing Requests & Managed Care Appeal Timelines	Allows beneficiaries to skip managed care plans and go directly to the state for a fair hearing on their grievance during the emergency period	2
Benefit Flexibilities	Asks for flexibilities Medicaid managed care populations during the emergency	3
Telehealth Flexibilities	Many service requirements include "in-person" clauses either in federal regulation or contractual language, this requests to waive these requirements and for services to be rendered virtually.	9
Payment Rate Flexibilities	Requests to current payment methodologies specifically to allow for increased cost due to patient surge during the emergency	5
Eligibility Flexibilities	Allow costs of testing and treatment for Medi-Cal beneficiaries who are subject to pay a share of cost	3
Administrative Flexibilities Related to Deadlines & Performance Timetables	Modify reporting, oversight, and evaluation for managed care organizations deadlines/timetables to the State and Federal government during the emergency	14

For a full list of the 65 requested provisions and their approval status please see the attached **appendix**.

Approved Provisions from California's Three 1135 Waivers

Provider Participation, Billing Requirements, & Conditions for Payment

Reimbursement for out-of-state providers not enrolled in Medi-Cal

Temporary & provisional enrollment for providers from Medicare or other Medicaid agency

Suspension of provider screening requirements for providers *not* otherwise from Medicare or other Medicaid agency

Provider revalidation suspension

Reimbursement to facilities for services rendered at unlicensed facility

Permit non-hospital buildings/spaces to be used for patient care and quarantine

Service Authorization & Utilization Controls

Extension of pre-existing authorizations for Medi-Cal beneficiaries who've received prior authorization

Suspension of Medi-Cal FFS prior authorization reqs.

Suspension on limit of Critical Access Hospitals # of beds and length of stay req. be 96 hours max.

Suspension of face-to-face physician authorization for replacement of Durable Medical Equipment, Prosthetics, Orthotics, & Supplies (DMEPOS)

Waive 3-day prior hospitalization req. for Skilled Nursing Facility (SNF) coverage

State Fair Hearing Requests & Appeal Timelines

Permits beneficiary to request a state fair hearing if their managed care plan does not resolve an appeal within one day

Additional 120 days for Medi-Cal beneficiaries to request a fair hearing when the initial 120-day deadline occurred during the period 1135 waiver

Telehealth Flexibilities

Allow group counselling to be provided via telehealth

Red Arrow = Potential Opportunities to Support Public Health

What is a 1915(c), Appendix K Waiver?

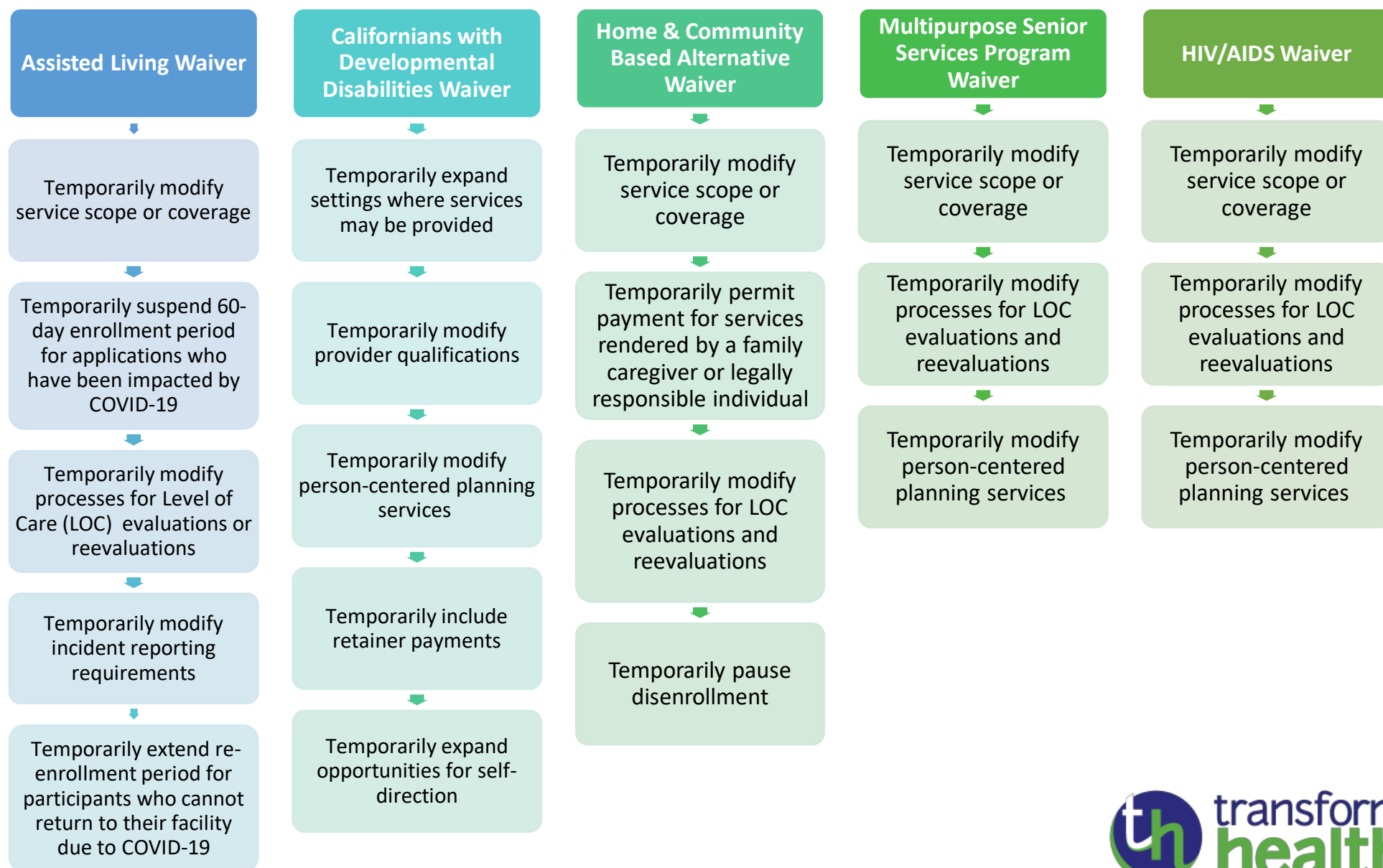
1915(c) waivers

- A 1915(c) permits states to offer home and community based services (HCBS) to limited groups of enrollees as an alternative to institutional care. This **waiver** also enables the state to cap who receives HCBS services and to **waive** a few other Medicaid statutes, including some income requirements.

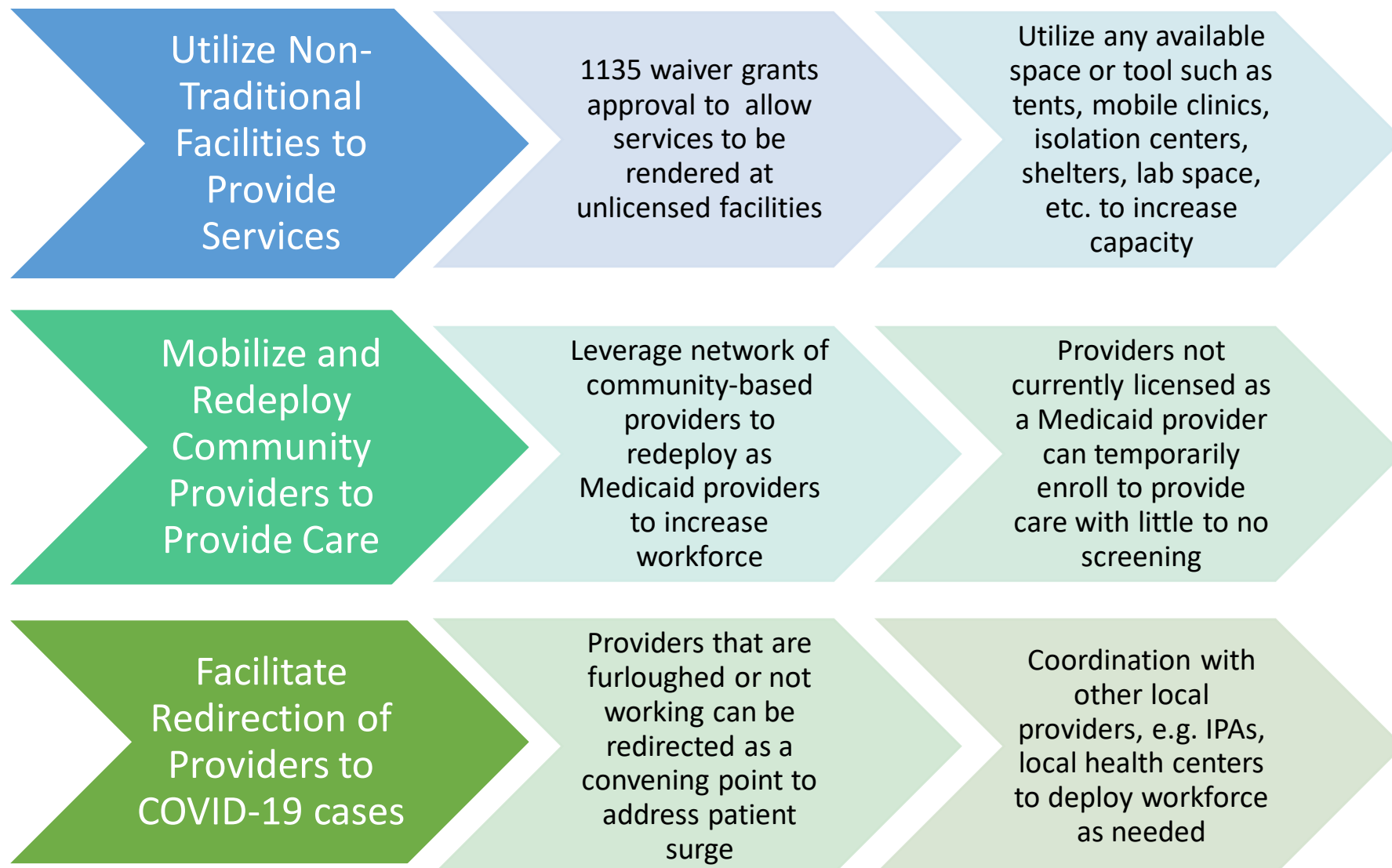
1915(c), Appendix K waivers

- **Appendix K** is a standalone appendix in a 1915(c) waiver that may be utilized by states during emergency situations to request amendment to existing and approved 1915(c) waivers. It includes actions that states can take under the existing Section 1915(c) home and community-based waiver authority in order to respond to an emergency.

Approved Provisions in California's 1915(c), Appendix K



Potential for Reimbursement: Leveraging 1135 Flexibilities



Potential for Reimbursement: COVID-19 Presumptive Eligibility

- Another potential opportunity for counties include a **new Presumptive Eligibility (PE) Program for COVID** that will allow Medi-Cal to pay for COVID-19-related diagnostic testing, testing-related services and treatment services, including the associated office, clinic or emergency room visit, at no cost to:
 1. The uninsured and individuals who do not qualify for any Medi-Cal programs (with the exception of those who have not met their Medi-Cal Share of Cost obligation); and
 2. Individuals with private insurance that does not cover diagnostic testing, testing-related services, and treatment services for COVID-19.
- **These individuals must be a California resident but there are no requirements regarding immigration status, income, or other resources.** To be eligible, patients must go through the PE process with *certain Medi-Cal providers who are already participating in existing PE programs*, such as hospitals, or community based providers already participating in the Child Health and Disability Prevention (CHDP) Gateway or the PE for Pregnant Women program.
- **This goes into effect April 24, 2020.** Additional information can be found here: http://files.medi-cal.ca.gov/pubsdoco/newsroom/newsroom_30339_27.asp

Key Takeaways

The approved provisions are key opportunities to support public health and bring more resources to support local efforts.

LHDs can leverage approved waiver provisions to access facilities, supplies, and network of providers through 1135 flexibilities

California may receive additional flexibilities through alternative waiver mechanisms in the coming weeks that LHDs can tap into

Are there other provisions that were not requested that would help? This may be an advocacy opportunity for any future DHCS requests.

Next Steps

- COVID-19 is expected to cause significant coverage changes. According to a recent study, **California is expected to see an additional 3M individuals join Medi-Cal** on top of the existing 13M already enrolled.¹
 - **New policy changes (federal and state) are coming out frequently** as new information comes to light and DHCS pursues additional regulatory relief. We will continue to share these changes as they occur.
- **If there are any regulatory changes that would be helpful to public health departments during this pandemic, please email those ideas to Dr. Tracy Delany at TDelaney@phi.org.**

¹ COVID-19 Impact on Medicaid, Marketplace, and the Uninsured, by State. April 3, 2020. Available online at: <https://www.healthmanagement.com/wp-content/uploads/HMA-Estimates-of-COVID-Impact-on-Coverage-public-version-for-April-3-830-CT.pdf>

List of References

- California 1135 Request #1: <https://www.dhcs.ca.gov/Documents/COVID-19/CA-1135-Waiver-COVID-19-031620.pdf>
- California 1135 Request #2: <https://www.dhcs.ca.gov/Documents/COVID-19/CA-1135-Waiver-Request-2-031920.pdf>
- California 1135 Request #3: <https://www.dhcs.ca.gov/Documents/COVID-19/CA-1135-Waiver-Request-3-for-COVID-19.pdf>
- California 1135 Approval: <https://www.dhcs.ca.gov/Documents/COVID-19/CA-1135-Flexibilities-Approval-Letter-Rev-032320.pdf>
- California Emergency 1115(a) Request: <https://www.dhcs.ca.gov/Documents/COVID-19/CMS-Ltr-and-CA-COVID-19-1115-Waiver-040320.pdf>
- California State Plan Amendment Request: <https://www.dhcs.ca.gov/Documents/COVID-19/20200403-COVID-19-SPA-20-0024-Pending.pdf>

List of References, Continued:

- California 1915(c) Appendix K Approval: <https://www.medicaid.gov/state-resource-center/downloads/ca-0183-appendix-k-appvl.pdf>
- Center for Medicare & Medicaid Services 1135 Request Guidance: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/Requesting-an-1135-Waiver-101.pdf>
- Center for Medicare & Medicaid Services 1135 Blanket Waiver List: <https://www.cms.gov/files/document/covid19-emergency-declaration-health-care-providers-fact-sheet.pdf>
- Center for Medicare & Medicaid Services Disaster Resource Toolkit: <https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/federal-disaster-resources/index.html>
- Kaiser Family Foundation Medicaid Emergency Authority Tracker: <https://www.kff.org/medicaid/issue-brief/medicaid-emergency-authority-tracker-approved-state-actions-to-address-covid-19/>
- Stafford Act: https://www.fema.gov/media-library-data/1582133514823-be4368438bd042e3b60f5cec6b377d17/Stafford_June_2019_508.pdf
- National Emergencies Act: <https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter34&edition=prelim>



Contact Us

Lisa Chan-Sawin, MHA, CEO & Principal

lisa@transformhc.com

Heather Bates, MSW, COO & VP, Stakeholder Engagement

heather@transformhc.com

Sara Gleysteen, MPH, Policy Analyst

sara@transformhc.com

 @TransformHC