California's Emergency Medicaid Waivers for COVID-19 Support

Overview & Implications for COVID-19 Support



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.

Provide background on
1135 waivers, what
they are and how they
fit in the context of
other waivers in
disaster response

Examine how they are being used in California to ensure adequate flexibility for the State to act decisively and support healthcare providers and patients

Assessment of California's 1135 requested provisions and approvals

Describe how these waivers can be leveraged to support public health, who serve as front line providers during the COVID-19 crisis



Methods of Obtaining Federal Flexibility During Times of Crisis

CMS Federal Blanket Waiver

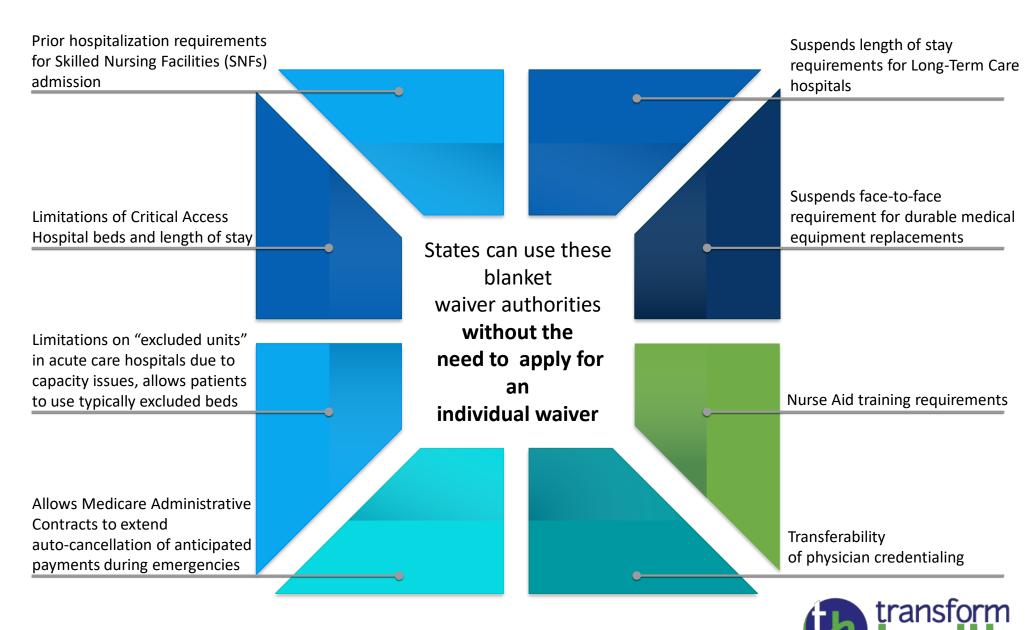
- Blanket waivers are emergency waivers to federal regulations that CMS puts in place during times of crisis, such as a public health emergency.
- The blanket waiver provisions apply to Medicaid, Medicare and the Children's Health Insurance Program (CHIP).
- States can automatically enact the flexibilities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

1135

- Temporarily modify regulatory components of Medicaid, Medicare, and Children's Health Insurance Program (CHIP) to provide reimbursement to facilities and providers during a crisis
 - > e.g. use an LHD facility to provide treatment or quarantine space for COVID-19 patients

Emergency 1115(a)

- Waiver that provides administrative and medical services flexibilities that states believe they need to respond to the public health emergency; including funding new infrastructure or programming
 - ➤ e.g. request emergency funding to rapidly increase or retrain healthcare workforce such as LHD staff to deploy and respond to COVID-19

1915(c) Appendix K

- Standalone appendix that may be utilized by states during emergency situations to request amendment to approved 1915(c) waivers. 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
 - ➤ e.g. Allow LHDs and other service providers to conduct telephonic or live virtual video Enhanced Care Management (ECM) services for HIV/AIDS patients

State Plan Amendment

- Amendment(s) to the agreement between the State and Federal government on how the State administers its
 Medicaid & CHIP programs, used to update with new information and to make changes or corrections to the
 agreed upon State plan.
- ▶e.g. Increase reimbursement rates for COVID-19 testing services for clinical labs such as public health labs

² In addition, California has two additional **pending** <u>1135 waiver</u>, a **pending** <u>emergency 1115(a) waiver</u>, and a **pending** State Plan Amendment waiver.



¹ Currently California has an **approved** <u>1135 waiver</u>, as well five **approved** <u>1915(c) Appendix K approvals</u>.

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

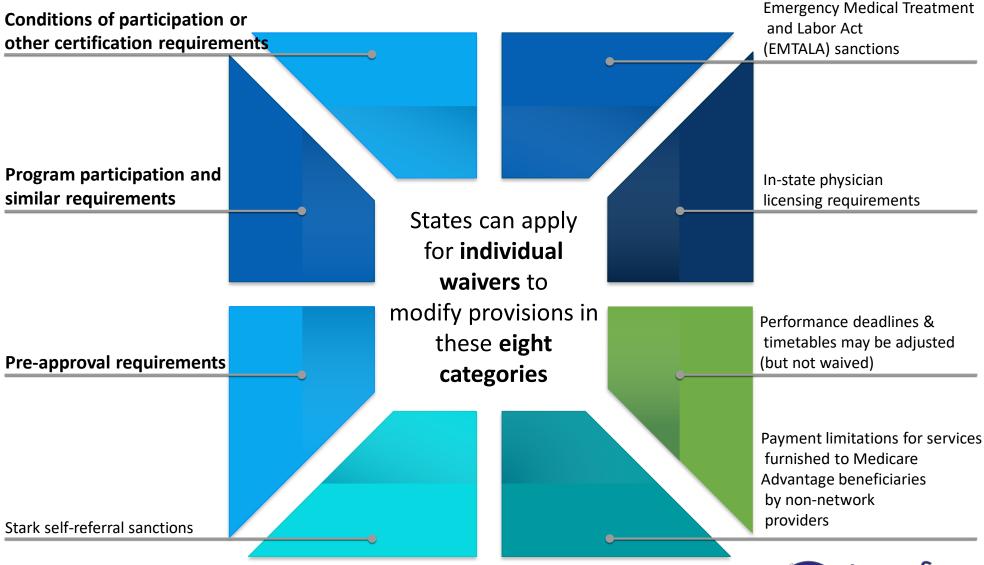
- Reimbursing providers that furnish medical assistance to beneficiaries in good faith
- Exemption from sanctions that might otherwise be in place during a non-emergency situation.



¹The 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-ofstate 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 <u>during emergency situations</u> 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

Assisted Living Waiver

Temporarily modify service scope or coverage

Temporarily suspend 60day enrollment period for applications who have been impacted by COVID-19

Temporarily modify processes for Level of Care (LOC) evaluations or reevaluations

Temporarily modify incident reporting requirements

Temporarily extend reenrollment period for participants who cannot return to their facility due to COVID-19 Californians with Developmental Disabilities Waiver

Temporarily expand settings where services may be provided

Temporarily modify provider qualifications

Temporarily modify person-centered planning services

Temporarily include retainer payments

Temporarily expand opportunities for self-direction

Home & Community
Based Alternative
Waiver

Temporarily modify service scope or coverage

Temporarily permit payment for services rendered by a family caregiver or legally responsible individual

Temporarily modify processes for LOC evaluations and reevaluations

Temporarily pause disenrollment

Multipurpose Senior Services Program Waiver

Temporarily modify service scope or coverage

Temporarily modify processes for LOC evaluations and reevaluations

Temporarily modify person-centered planning services

HIV/AIDS Waiver

Temporarily modify service scope or coverage

Temporarily modify processes for LOC evaluations and reevaluations

Temporarily modify person-centered planning services



Potential for Reimbursement: Leveraging 1135 Flexibilities

Utilize Non-Traditional Facilities to Provide Services

1135 waiver grants approval to allow services to be rendered at unlicensed facilities

Utilize any available space or tool such as tents, mobile clinics, isolation centers, shelters, lab space, etc. to increase capacity

Mobilize and Redeploy Community Providers to Provide Care Leverage network of community-based providers to redeploy as Medicaid providers to increase workforce

Providers not currently licensed as a Medicaid provider can temporarily enroll to provide care with little to no screening

Facilitate
Redirection of
Providers to
COVID-19 cases

Providers that are furloughed or not working can be redirected as a convening point to address patient surge

Coordination with other local providers, e.g. IPAs, local health centers to deploy workforce as needed



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 <u>approved</u> 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 <u>an</u> <u>additional 3M individuals join Medi-Cal</u> 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, <u>please email</u> those ideas to Dr. Tracy Delany at TDelaney@phi.org.



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





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

