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March 29, 2020

**ATTENTION:** South Dakota Medicaid Providers

**FROM:** South Dakota Medicaid

**RE:** CMS 1135 Waiver Response

On March 19, 2020 the South Dakota Department of Social Services (DSS) requested federal authority from the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) to provide flexibility for South Dakota's Medicaid program, including its recipients and providers during the COVID-19 pandemic through an 1135 waiver. The 1135 waiver allows the State Medicaid Agency to temporarily waive or modify certain Medicaid and Children's Health Insurance Program (CHIP) requirements to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in these programs.

On March 24, DSS received CMS' initial response, CMS responded to additional items in South Dakota's 1135 on March 26. DSS will seek CMS guidance on the flexibilities that were not addressed by CMS on March 24 and March 26. DSS will send additional communication as more information becomes available.

CMS's response (attached) addressed several items that pertain to provider requirements in order to maintain eligibility to participate with the Medicare and Medicaid programs. The relaxation of survey and conditions of participation were geared towards facilities are not specific to Medicaid and were broader than requested. These items do not impact Medicaid operations but directly impact providers and how they operate to allow health care providers to focus on direct patient care. South Dakota Medicaid encourages providers to review CMS's guidance directly regarding how the waived condition of participation provisions may affect their operations. CMS directly addressed flexibilities for the following providers, effective March 1, 2020:

- 1. Hospitals, Psychiatric Hospitals and Critical Access Hospitals (CAHs):** The following provisions have been waived or granted to providers through the waiver of certain federal requirements:
  - a. Allows off-site EMTALA screenings in a location other than the hospital.

The Department of Social Services does not exclude, deny benefits to, or otherwise discriminate against any person on the basis of actual or perceived race, color, religion, national origin, sex, age, gender identity, sexual orientation or disability in admission or access to, or treatment or employment in its programs, activities, or services. For more information about this policy or to file a Discrimination Complaint you may contact: Discrimination Coordinator, Director of DSS Division of Legal Services, 700 Governor's Drive, Pierre SD 57501, 605-773-3305.

ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-800-305-9673 (TTY: 711).

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- b. Extends timeframes in surge situations for authentication of verbal/standing orders, reporting of patient deaths where a restraint was used on the patient, provision of a copy of medical records for patients, and completion of medical records following patient discharge.
  - c. Waives patient rights related to patient visitation and seclusion for COVID-19 patients.
  - d. Grants the ability for facemasks to be re-used in sterile compounding areas by staff during the same shift to conserve medical supplies.
  - e. Waives certain discharge planning requirements for patients transitioning to long-term care options to expedite patient transfer and discharge.
  - f. Waives requirements related to physician credentialing by the hospital's governing body in order to allow new and existing staff to provide direct patient care immediately.
  - g. Waives provisions requiring hospitals to provide information on advance directive policies to patients to allow for more efficient management of a large number of patients.
  - h. Allows hospitals to provide patient care or quarantine at non-hospital buildings/sites in the event of a surge when the state has approved the site as meeting requirements for patient comfort and patient and staff safety. DSS and DOH ask facilities to provide notice of any anticipated need for non-hospital buildings/site use.
  - i. Allows Critical Access Hospitals to exceed the 25-bed limit and the 96 hours length of stay limit.
- 2. Skilled nursing facilities (SNF):** The following requirements are waived: submission of staffing data through the Payroll-Based Journal system, recipient participation of in-person resident groups, and employment time limit due to training status training. In addition, CMS commented/clarified on two previously addressed areas advising that non-SNF buildings can be temporarily used when certain conditions are met and PASARR requirements are waived. The PASARR clarifications and non-SNF building use do not change guidance previously given to providers. SD providers should review the clarifications to operationalize them if needed due to COVID-19.
- 3. Home health agencies (HHA):** OASIS reporting requirements have been waived or extended. Biweekly onsite visits by nurses and 2-week aide supervision requirements are waived with virtual supervision and actions encouraged. Initial assessments and statuses are permitted to be completed remotely or by record review. The waived requirements do not impact Medicaid day-to-day operations. Providers have increased flexibility to maximize practitioner care availability to those most in need.
- 4. Hospice:** The requirements to use volunteers and provide certain non-core hospice services such as physical therapy are waived. Biweekly onsite visits by nurses and 2-week aide supervision requirements are waived with virtual supervision and actions encouraged. The timelines to complete assessments have been relaxed. The waived requirements do not impact Medicaid day-to-day operations. Providers have been given increased flexibility. Some recipients may not receive physical, occupational, or speech language therapy services while in hospice that they previously received.

Some of DSS's requests are still unanswered by CMS, including a request for confirmation of authority to implement a number of flexibilities related telemedicine services. The absence of a direct response from CMS on this topic has not impeded DSS's ability to implement flexibilities needed by South Dakota Medicaid providers to care for recipients. South Dakota Medicaid has implemented a

wide range of temporary flexibilities to telemedicine services, effective March 13, 2020. A comprehensive review of those flexibilities can be found in the [Provider Frequently Asked Questions](#) as well as in the [Telemedicine Provider Manual](#).

DSS will continue to work with CMS to clarify flexibilities that were requested but not directly addressed in CMS's response and will keep all stakeholders apprised. Additional 1135 waiver requests will be submitted if/as appropriate.

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