

DEPARTMENT OF SOCIAL SERVICES

DIVISION OF MEDICAL SERVICES

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March 19, 2020

Jackie Glaze
Acting Director, Medicaid & CHIP Operations Group
Center for Medicare & Medicaid Services
Sent via email

Re: South Dakota 1135 Waiver Request

Ms. Glaze:

As you know in response to the COVID-19 pandemic, the President of the United States has declared an emergency or disaster under the National Emergencies Act or Stafford Act and the Health and Human Services Secretary declared a Public Health Emergency Declaration under Section 319 of the Public Health Service Act. Also in response to the COVID-19 pandemic, South Dakota is requesting specific flexibilities under an 1135 Waiver of certain provisions of the Medicaid and Children's Health Insurance Program. We ask that the following flexibilities apply to all counties in the State and all applicable providers retroactively to the HHS Secretary's declaration of a Public Health Emergency or as early as possible.

General Medicaid and CHIP Program Administration

South Dakota is requesting the following waivers related to general Medicaid and Children's Health Insurance Program (CHIP) administration.

1. A waiver of all provider enrollment requirements and validation including fingerprint-based background checks.
 - Criminal background checks
 - Site Visits
 - In-state/territory licensure requirements
2. Waive requirements that physicians or other health care professionals hold licenses in the State in which they provide services if they have an equivalent license in another State (and are not affirmatively barred from practice in that State or any State a part of which is included in the emergency area).
3. Continued flexibility for the suspension of the Centers for Medicare and Medicaid Survey.
4. A waiver to extend timeframes for recipients to request fair hearings and for Medicaid/CHIP to respond to fair hearing requests.

Nursing Facilities

South Dakota is requesting the following waivers related nursing facilities.

1. A waiver of Level 1 and Level 2 Pre- Admission Screening and Annual Resident Review Assessments and Minimum Data Set Assessments.
2. A waiver of requirements for mandated nursing facility physician visits to limit nursing facility resident exposure to COVID-19.
3. A waiver to allow ancillary staff other than nurse aides to perform Activities of Daily Living care to residents after a documented training and/or under supervision from a Registered Nurse.
4. A waiver to allow contracted pharmacists, dietitians, social services consultants to work remotely.
5. A waiver to allow facilities to determine room assignments of residents.
6. A waiver regarding requirements to submit data for National Healthcare Safety Network (NHSN) or other quality information.
7. A waiver of the skilled nursing facility three-day qualifying hospital stay requirement for recipients to help ensure the availability of inpatient beds for seriously ill patients.
8. Waiver of Stark Law self-referral sanctions.

Hospitals, Clinics and Other Health Care Providers

South Dakota is requesting the following waivers related to hospitals, clinics, and other health care providers.

1. A waiver to allow facilities including nursing homes, hospitals, intermediate care facilities, and psychiatric residential treatment facilities to provide services in an alternative setting and for the services to be covered and reimbursed by Medicaid.
2. A waiver to allow acute care hospitals to have acute care beds in excluded distinct units of the hospital to allow providers flexibility to move patients as necessary.
3. A waiver of the Emergency Medical Treatment and Labor Act (EMTALA) sanctions for redirection of an individual to receive a medical screening examination in an alternative location or transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances in accordance with the state emergency preparedness plan and allow posting on emergency department doors that only patients with true emergency should enter and provide a call in number that direct patients to other locations as needed.
4. A waiver to allow Critical Access Hospitals to exceed the 25-bed limit and the 96 hours length of stay limit.
5. A waiver to delay timeframes related to OASIS Transmission submissions by home health agencies.
6. A waiver to allow Medicaid to pay for the same telehealth services that Medicare has been granted authority to pay for, including office, hospital, and other visits furnished via telehealth across South Dakota and including in patient's places of residence starting March 6, 2020, whether provided by doctors, nurse practitioners, clinical psychologists, and licensed clinical social workers, or other provider types. Additionally, the HHS Office of Inspector General (OIG) is providing flexibility for healthcare providers.
7. A waiver to allow Physical Therapy and Occupational Therapy to be delivered utilizing real-time audio/visual telehealth when certain conditions apply such as services related to COVID-19 infection or high risk thereof.

8. A waiver to allow Community Mental Health Centers, Substance Use Disorder Agencies, and Independent Mental Health Practitioners to perform counseling and assessments via audio-only technology when certain conditions apply such as patient's lack of access to face-to-face audio/visual technology or services related to COVID-19 infection or high risk thereof.
9. A waiver to allow reimbursement for telephonic consults when certain conditions apply such as services related to COVID-19 infection or high risk thereof.
10. A waiver to reduce or waive cost-sharing for telehealth visits paid by federal healthcare programs.
11. A waiver to extend to South Dakota Medicaid and providers enrolled with South Dakota Medicaid the HHS Office for Civil Rights (OCR) enforcement discretion and waiver of penalties for HIPAA violations related to services for patients in good faith through everyday communications technologies, such as FaceTime or Skype, during the COVID-19 nationwide public health emergency.
12. A waiver to allow until December 31, 2021 to implement electronic visit verification (EVV) requirements.
13. A waiver to allow, under the HHS Secretary's discretion, the requirement of the referring NPI for all 837I transactions in furtherance of managed care and care coordination goals of Medicaid programs.
14. Waiver of hospice care requirements for a comprehensive assessment by a nurse every 14 days.
15. Waiver of Stark Law self-referral sanctions.
16. Request to waive the type of services Specialty Hospitals are required to provide including the requirement to primarily engage in providing services related to cardiac conditions, orthopedic conditions, or those receiving surgical services. Allow Specialty Hospital to act as an alternate inpatient Hospital.
17. Request to waive the requirement (CFR 42 491.8(a)(6)) for a nurse practitioner, physician's assistant, or certified nurse-midwife to be available to furnish services at least 50% of the time a rural health clinic operates. Doing so would allow rural health clinics flexibility to provide more services during this time of a nation-wide health emergency.

Thank you for your consideration of this request. Please contact us with any questions.

Sincerely,

A handwritten signature in black ink that reads "William C. Snyder". The signature is fluid and cursive, with the first name "William" and last name "Snyder" clearly legible.

William Snyder
Director
Division of Medical Services
South Dakota Department of Social Services