



COLORADO

Department of Health Care
Policy & Financing

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Colorado's COVID-19 Emergency Waiver Overview

Last Updated: March 30, 2020

Background & Process

The Centers for Medicare and Medicaid Services (CMS) is working with states to provide additional program flexibility for Medicaid (in Colorado, “Health First Colorado”) and Children’s Health Insurance Program (in Colorado, “CHP+”) to address the COVID-19 pandemic. When possible, we are implementing flexibility through existing authority, such as emergency rulemaking related to [telemedicine](#). The process to ask CMS for flexibility is called a waiver. The two primary types of waivers states are using to ask for flexibility are Section 1115 and 1135 waivers.

In addition, states can ask for flexibility through an Appendix K amendment for 1915(c) Home and Community-Based Services (HCBS) waivers. Appendix K is used by states to advise CMS of expected changes to its waiver operations or to request an amendment to its approved waiver programs during an emergency. Colorado was proactive in asking for flexibility. We submitted our first request in the [form of an 1115 Waiver](#) and asked for additional [flexibility for our ten \(10\) HCBS waivers](#) on March 13, 2020, before many other states and before the federal government had finalized its preferred process for requests. We submitted the [1135 waiver](#) on March 24, 2020. CMS responded with partial approvals for various elements of the requests on March 26, 2020. Development of a waiver usually takes months; the Department completed our waiver request in days given the urgency of COVID-19.

Submitting our requests for flexibility to the federal government and their response is only a first step. Once final federal approvals are given, and new stimulus or other federal funding is available, the requests will have to still be considered within the state’s overall budget constraints and are subject to Office of State Planning and Budgeting (OSPB) and General Assembly approvals. In other words, an approval by the federal government on a request does not mean the Department will implement that option. All of the approvals have to be reviewed together against available funding and the overall state budget.

We are in almost daily communications with our federal partners on the parts of the requests they did not approve. We will update this fact sheet as more information becomes known.

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What We've Asked For

During this pandemic and in any economic downturn that may follow, enrollment in Health First Colorado and CHP+ will increase - likely significantly. The Department is committed to providing health care coverage and peace of mind when Coloradans need it the most. In that spirit, our request focused on temporary changes to ensure continuous coverage for individuals currently enrolled in Health First Colorado and CHP+, ease administrative burdens on new enrollees, support long-term care, support providers and cover the uninsured for COVID-19 related testing and treatment.

Proposed temporary eligibility provisions for areas impacted by pandemic.

- Continue Health First Colorado and CHP+ eligibility without a redetermination or additional documentation.
- Allow more time to appeal eligibility decisions (more than the typical 90 days).
- Extend time to act on changes in circumstances that could impact eligibility.
- For members evacuated and unable to return to Colorado - consider them "temporarily absent" to maintain coverage.
- Cover nonresidents who are in Colorado due to a disaster in their state.

Proposed long-term care temporary changes to ensure the most vulnerable people have access to coverage and services.

- Allow for self-attestation for many application requirements such as income, when individuals apply online through our [PEAK application](#).
- Exceed service limitations or requirements for amount, durations, and prior authorization to address health and welfare issues arising due to the emergency for HCBS members.
- Expand setting(s) where services may be provided.
- Remove face-to-face eligibility requirements for certain assessments.
- Suspend work requirements for Buy-In programs.
- Waive long-term care, nursing home and other assessment timelines during the pandemic.

Proposed support and flexibility for providers as they care for our members during the pandemic.

- Ability to increase, supplement or provide additional payment(s) to ensure continuity of operations and assurance of member health, safety and welfare.

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- Allow for telemedicine in long-term programs, settings, and facilities.
- Permit payment for services rendered by family caregivers or legally responsible individuals for individuals who are enrolled in an HCBS waiver.
- Modify licensure or other requirements for settings where HCBS waiver services are furnished.
- Allow nursing facilities and hospitals to provide care and to receive Health First Colorado payment for alternative locations if their facility needs to be evacuated or is at capacity.

Proposed pathways to cover the uninsured during the pandemic.

The Department is directing providers to encourage patients and individuals who want to apply for Health First Colorado coverage to apply online through [PEAK](#), where they can get a real-time eligibility determination, and then to download our *PEAKHealth* App to get updated information. We have asked for additional program flexibility to help cover the uninsured including:

- Covering uninsured individuals, if certain criteria are met, to get testing for COVID-19 as well as treatment. Unfortunately, the treatment component was verbally denied. Testing for uninsured individuals was authorized through the last congressional relief bill.
- Presumptive eligibility, allowing individuals to self-declare many application requirements such as income, when they apply through our PEAK online application.

Federal Response - Partial Approvals

On March 26, 2020, CMS responded to the Department's requests for program flexibility to address COVID-19. **This is only a first step as the Department must consider additional costs to the state budget, system and other authorization before implementation.**

The [federal approval](#) of the initial 1135 request includes the **option** to:

- Temporarily suspend Health First Colorado fee-for-service prior authorization requirements.
- Extend pre-existing authorizations for which a beneficiary has previously received prior authorization through the end of the public health emergency.
- Suspend Pre-Admission Screening and Annual Resident Review (PASRR) Level I and Level II Assessments for 30 days.
- Extend state fair hearing requests and appeal timelines.
- Ease provider enrollment processes for providers enrolled with other Health First Colorado programs and/or Medicare.
- Allow additional flexibility for deadlines and notices during the emergency for State Plan Amendments.



The Department requested several additional waivers or modifications that CMS is continuing to review and are not currently reflected in the approval which include:

- Extend the minimum data set authorizations for nursing facility and skilled nursing facility (SNF) residents.
- Leniency from ensuring that nursing facilities perform a resident assessment (also known as an MDS assessment) in a timely manner.
- Suspend the two-week aide supervision requirement by a registered nurse for home health agencies.
- Suspend the requirement of supervision of hospice aides by a registered nurse every 14 days for hospice agencies.
- Allow licensed hospital providers to transfer beneficiaries and provide services in alternative settings when a hospital has determined that it has reached bed capacity.
- Suspend state site visits and survey agency activities, including requirements related to onsite protocols such that those audits may be performed virtually, if feasible.
- Waive the requirement that the Department respond to Corrective Action Plans and Requests for Additional Information issued by CMS until ninety (90) days following the conclusion of the Section 1135 waiver.
- Request that CMS suspend all audit activities and requests for information from the Department and providers related to Payment Error Rate Measurement (PERM) until ninety (90) days following the end of the conclusion of the Section 1135 Waiver.
- Prioritize Non-Emergent Medical Transportation (NEMT) services for patients receiving lifesaving care in the event of insufficient network capacity.
- Request a waiver to ensure that Skilled Nursing Facilities will not be subject to the Institution for Mental Disease (IMD) status.
- Modify nursing facility, assisted living facility, and intermediate care facility staff training, minimum ratio, and on-boarding requirements, and the ability to allow them to modify readmission policies for individuals who voluntarily leave or discharge from the facility to protect residents from potential community exposure.

On March 26, 2020, [CMS fully approved](#) the Department's request to amend all 10 of Colorado's 1915(c) waivers with the Emergency Preparedness and Response Appendix K in order to respond to the COVID-19 pandemic. The amendment is effective from March 10, 2020, through September 10, 2020, and applies in all locations served by the individual waivers for anyone impacted by COVID-19.

The approval of the Appendix K includes the **option** to:

- Exceed service limitations or requirements for amount, duration, and prior authorization to address health and welfare issues presented by the emergency;
- Expand setting(s) where services may be provided;
- Permit payment for services rendered by family caregivers or legally responsible individuals;
- Modify licensure or other requirements for settings where waiver services are furnished;
- Modify processes for level of care evaluations or re-evaluations;
- All CMA required activities may be completed via phone or other technology-based method with HCBS members in accordance with HIPAA requirements; and



- HCBS members may receive one service per month for the length of the State Disaster Plan without being subject to discharge via telephonically or monthly monitoring by telehealth in accordance with HIPAA requirements.

The Department intends to include the following items under the 1135 waiver for our 1915 (c) programs as CMS determined they fall outside the Appendix K authority.

- Temporarily allow HCBS members to receive less than one service every 30 days without being subject to discharge.
- Temporarily designate time-limited supplemental utilization funds, or paid sick leave, to support participants in self-directed plans, ensuring they have access to appropriate care and to promote their health, safety, and welfare.
- Temporarily allow home delivered meals to be delivered in bulk one day a week, rather than the approved two meals per day.
- Temporarily allow members' existing eligibility to continue through the duration of Appendix K. The yearly reassessment will occur up to six months after Appendix K ends. The Department will not require signed forms for eligibility during the time of Appendix K approval.
- Temporarily supplement additional payments for the consumer directed FMS vendors for increased workload due to the COVID-19 pandemic.

We are in ongoing conversations with our federal partners on the parts of the requests they did not approve. We will update this fact sheet as more information becomes known.

What Comes Next

The Department is in ongoing conversations with the federal government on the sections of its requests that were not approved related to temporary Health First Colorado and CHP+ program changes to address COVID-19. As final federal approvals are given, and new stimulus or other federal funding is available, the requests will have to still be considered within the state's overall budget constraints and are subject to budget and General Assembly approvals. This work will be ongoing.

As more information becomes known, we will update this fact sheet and communicate approved program changes to providers, county and eligibility partners, and other stakeholders. Updates will also be posted on the Department's website.

For more information, visit [Colorado.gov/hcpf/COVID](https://colorado.gov/hcpf/COVID).

