



Medicaid and CHIP Coverage Learning Collaborative
Inventory of Medicaid and CHIP Flexibilities and Authorities
in the Event of a Disaster

August 20, 2018

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OVERVIEW

Introduction

Medicaid has played a critical role in helping states and Territories respond to public health crises and natural and human-made disasters such as hurricanes (e.g., Hurricanes Katrina, Maria, Harvey and Irma), wildfires (e.g., California wildfires), flooding (e.g., Hurricane Harvey floods in Texas), and public health crises (e.g., Flint, Michigan lead contamination crises).

To help Medicaid agencies prepare for such disasters in the future, the Centers for Medicare and Medicaid Services (CMS) Coverage Learning Collaborative developed a set of tools to prepare states on the strategies available to support Medicaid operations and enrollees in times of crisis. Based on interviews with federal officials and a review of federal statute, regulation and approved 1135 and 1115 Waivers, the CMS Coverage Learning Collaborative team compiled a detailed list of all available strategies, some of which are available without needing approval from CMS. The following tables inventory the various strategies available to states and Territories and the action needed to effectuate them.

In the event of a disaster, state Medicaid agencies should reach out to Jackie Glaze, Senior Policy Advisor, who will serve as the point of contact for shepherding all requests for flexibilities across CMS' divisions. She can be reached at 312-353-3653 or at Jackie.Glaze@cms.hhs.gov. States and Territories are encouraged to also make contact with their local Regional offices.

Disaster-Related Legal Authorities

- **Medicaid State Plan Amendment:** In response to a disaster, states or Territories may wish to revise Medicaid eligibility, enrollment, and benefit requirements in their State Plan. The State Plan must be amended to reflect material changes to the State Medicaid program via submission of a proposed State Plan Amendment (SPA); SPAs must be approved by CMS. Medicaid SPAs can be retroactive to the first day of the quarter in which an approvable amendment was submitted to the CMS regional office.

There are some circumstances where a state or Territory may leverage flexibilities and is not required to amend their State Plan. For example, under 42 CFR § 435.912, there is an exception to timeliness standards for applications and renewals in unusual circumstances beyond the agency's control; the state or Territory must document the reason for the delay in the applicant's case record and is advised to obtain CMS concurrence that their application is warranted under the circumstance, but does not need to amend its State Plan. While not technically required under the regulations, prior CMS concurrence would assist in the event of a PERM review or other audit.

- **CHIP Disaster Relief State Plan Amendments:** In advance of or in response to a disaster, states or Territories may wish to document a list of CHIP eligibility, enrollment and cost sharing provisions that will go into effect in the event of a disaster. States that add this information in advance of a disaster may activate it by alerting CMS. States that add it at the time of a disaster can put the provisions into effect upon the disaster and work with CMS to get approval retroactively, within CHIP regulations.

- **Verification Plan:** States or Territories wishing to change their Medicaid and CHIP verification processes in response to a disaster must document those changes in an amended Verification Plan. These provisions would go into effect immediately. States or Territories submit an updated Verification Plan and no CMS approval is required.

The flexibility under 42 CFR § 435.952(c) requires states to accept self-attestation when documentation is not available due to a disaster (unless the statute specifically requires documentation, as is the case for citizenship/immigration status). A state would not be required to amend its Verification Plan to utilize this authority but CMS recommends documenting the application of the flexibility and obtaining CMS concurrence in the event of a PERM review or other audit.

- **1915(c) Waiver Appendix K:** States may submit Appendix K before or during emergencies to document necessary changes to waiver operations. Appendix K includes actions that states can take under the existing Section 1915(c) authority in order to respond to an emergency. The provisions of Appendix K would go into effect in the event of a disaster.
- **1135 Waiver:** Under Section 1135 of the Social Security Act, the Secretary has the authority to temporarily waive or modify certain Medicare, Medicaid and CHIP requirements to ensure that sufficient health care items and services are available to meet the needs of enrollees in an emergency area. The Secretary may invoke 1135 Waiver authority when a declaration of emergency or disaster under the National Emergencies Act or Stafford Act and a Public Health Emergency Declaration Under Section 319 of the Public Health Service Act have been declared. 1135 authority enables providers to furnish needed items and services in good faith during times of disaster and be reimbursed and exempted from sanctions (absent any determination of fraud or abuse). 1135 waivers typically end no later than the termination of the emergency period or 60 days from the date the waiver or modification is first published.
- **1115 Demonstration:** Under Section 1115 of the Social Security Act, the Secretary has broad, but not unlimited, authority to approve a state's or Territory's request to waive compliance with certain provisions of federal Medicaid law and authorize expenditures not otherwise permitted by law. A waiver may be granted for an "experimental, pilot or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of the Medicaid program. To receive a section 1115 demonstration, states must submit a demonstration request and agree on Special Terms and Conditions. States that have a federally declared disaster are deemed to meet budget neutrality. States may be exempt from the normal public notice process in emergent situations provided they meet 42 CFR § 431.416(g)(2). Disaster-related demonstrations can be retroactive to the date of the Secretary declared public health emergency.

TABLE A: ELIGIBILITY AND ENROLLMENT

AVAILABLE FLEXIBILITIES	RELEVANT AUTHORITIES AND SOURCES ^a	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLES
A1. Eligibility and Enrollment			
Eligibility Levels			
Provide coverage at higher income levels for specific populations	42 CFR § 435.218 (Provides for eligibility levels above 133% FPL for individuals under 65 with MAGI-based income). Can be targeted to one or more categorical populations in 1905(a)	Submit Revised Eligibility SPA.	
Increase eligibility levels for specific eligibility categories within specific geographic region	SSA § 1902(a)(1) (Requires services to be provided on a statewide basis) 1902(a)(10) (Requires making benefits available to all individuals within the same eligibility category) SSA § 1115	Submit 1115 waiver request.	

AVAILABLE FLEXIBILITIES	RELEVANT AUTHORITIES AND SOURCES ^a	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLES
Residency			
Consider beneficiaries evacuated from the state temporarily absent and maintain enrollment in their home state (for home state where disaster occurred or public health emergency exists)	42 CFR § 435.403(j)(3) (Requires that a state does not deny or terminate Medicaid eligibility because of temporary absence from the State) 42 CFR § 457.320(e) (Applies same Medicaid residency standards to CHIP) 42 CFR § 431.52 (Authorizes payment to providers for services provided out of state)	Document policy in compliance with state’s record keeping practices and seek concurrence from CMS.	
Cover non-residents, or a state-defined subset of non-residents, such as individuals living in the state temporarily due to a disaster circumstance in their home state. (Option for state receiving evacuees)	42 CFR 435.403 (Defines residency for individuals over the age of 21 as one who is living and intends to reside, without a fixed address in the state; or has entered the State with a job commitment or seeking employment)	Submit revised Eligibility SPA.	
Resource Tests			
State may apply either host state’s resource test criteria or, if less restrictive, resource criteria of the state from where the applicant evacuated.	SSA 1902(r)(2) SSA § 1115	Submit state plan to apply other state’s resource test, if applying change statewide. Submit 1115 waiver request if seeking to waive resource for a subset of the population.	Hurricane Katrina SHO (#05-001) (9/16/05), https://www.medicare.gov/federal-policy-guidance/downloads/sho-05-001.pdf

AVAILABLE FLEXIBILITIES	RELEVANT AUTHORITIES AND SOURCES ^a	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLES
Non-MAGI Eligibility			
Temporarily suspend requirement that beneficiaries eligible for the “special income level group” (SSA § 1902(a)(10)(A)(ii)(V)) be institutionalized in a medical institution or institution for individuals with intellectual disabilities for at least 30 days and have income below 300% of the SSI federal benefit rate	SSA § 1902(a)(1)(A)(ii)(V)	Submit 1115 waiver request.	
Temporarily suspend transfer-of-asset rules (SSA § 1917(c)) for individuals placed into nursing facilities or comparable institutions	SSA § 1902(a)(18) (Requires compliance of section 1917 with respect to liens, adjustments and recoveries of medical assistance correctly paid, transfers of assets, and treatment of certain trusts.)	Submit 1115 waiver request.	
1915(c) Eligibility			
Modify additional 1915(c) enrollee targeting criteria in order to serve additional individuals	1915(c) waiver Appendix K	Submit Appendix K.	
Temporarily increase individual cost limits for 1915(c) enrollees	1915(c) waiver Appendix K	Submit Appendix K.	
Increase the number of unduplicated 1915(c) enrollees (Factor C) (may be necessary to expand additional targeting criteria to serve more individuals or to increase the number of people entering, exiting and re-entering the waiver)	1915(c) waiver Appendix K	Submit Appendix K.	
A2. Eligibility Determination at Application			
Develop a simplified paper application to support other enrollment strategies for use in affected areas	42 CFR 435.907(b)(2) (Allows for use of alternative single, streamlined application)	Submit SPA to add an alternative single streamlined application for affected population.	

AVAILABLE FLEXIBILITIES	RELEVANT AUTHORITIES AND SOURCES ^a	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLES
Treat assessments from the Federally Facilitated Marketplace (FFM) through the account transfer process as determinations or fully delegate authority to the FFM for determinations	42 CFR § 435.1200 (Establishes authority to delegate determinations to the FFM)	Assessment states have flexibility to accept assessments from the FFM as determinations and enroll individuals into coverage without additional verification. No additional or express authority from CMS is needed. Document policy in compliance with state’s record keeping practices and seek concurrence from CMS.	
Adopt presumptive eligibility for eligible populations	42 CFR § 435 Subpart L (Enables presumptive eligibility authority)	Submit Presumptive Eligibility SPA.	
Extend the availability of hospital presumptive eligibility to non-MAGI groups (including eligibility groups for individuals with disabilities)	42 CFR § 435 Subpart L (Enables presumptive eligibility authority)	Submit Hospital Presumptive Eligibility SPA.	
Establish the state as a presumptive eligibility qualified entity to presumptively enroll individuals based on preliminary application information. Individuals who complete a full application would not be required to complete a new application for a full eligibility determination.	42 CFR § 435 Subpart L (Enables presumptive eligibility)	Submit Presumptive Eligibility SPA.	

AVAILABLE FLEXIBILITIES	RELEVANT AUTHORITIES AND SOURCES ^a	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLES
Waive 3-month retroactive Medicaid eligibility for applications made under a temporary eligibility period	SSA § 1902(a)(34) (Requires provision of medical assistance for up to 3 months prior to the date that application for assistance under a temporary eligibility period for evacuees) SSA § 1115	Submit 1115 waiver request.	Hurricane Katrina SHO (#05-001) (9/16/05), https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-05-001.pdf
Extend application processing times	42 CFR § 435.912(e)(2) (Permits time limits to exceed federal timeliness standards days in emergency situations and document reason for delay in the applicant’s case record)	Document reason for extended timeframes for determination in the applicant’s case record. Document policy in compliance with state’s record keeping practices and seek concurrence from CMS.	California Wildfires Approval Letter (1/30/18)
A3. Redetermination and Change in Circumstances			
Medicaid			
Delay renewal processing for individuals in affected area	42 CFR 431.211 (Requires minimum 10 days advance notice before taking adverse action) 42 CFR § 435.912(e)(2) (Permits time limits to exceed federal timeliness standards in emergency situations and document reason for delay in the applicant’s case record) 42 CFR 435.930 (Requires state to continue furnishing assistance until beneficiary is determined ineligible)	Document reason for extended timeframes for redetermination in the applicant’s case record. Document policy in compliance with state’s record keeping practices and seek concurrence from CMS.	Hurricane Katrina SHO (#05-001) (9/16/05), https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-05-001.pdf Louisiana 1902(e)(14) request (8/22/16) California Wildfires Approval Letter (1/30/18)

AVAILABLE FLEXIBILITIES	RELEVANT AUTHORITIES AND SOURCES ^a	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLES
Temporarily delay acting on certain changes in circumstances affecting Medicaid eligibility	42 CFR § 435.912(e)(2) (Permits time limits to exceed federal timeliness standards in emergency situations and document reason for delay in the applicant’s case record)	Document reason for extended timeframes for acting on change in circumstances in the applicant’s case record. Document policy in compliance with state’s record keeping practices and seek concurrence from CMS.	
Establish 12 month continuous eligibility for children or adults	SSA § 1902(e)(12) SSA § 1115	Submit 1115 waiver request for: (1) adults; or (2) to provide 12 month continuous eligibility for only a subset of children in the state. Submit SPA for children statewide.	
CHIP			
Allow enrollees to receive services beyond their certification period by extending CHIP renewal deadlines	42 CFR § 457.340(d)(1) (Permits time limits to exceed federal timeliness standards in emergency situations and document reason for delay in the applicant’s case record) 42 CFR § 457.340(e)(1)(iii) (Requires sufficient notice to enable the child's parent or other caretaker to take any appropriate actions that may be required to allow coverage to continue without interruption)	Submit a CHIP Disaster Relief SPA.	Texas CHIP SPA TX-17-0043 (8/31/17), https://www.medicaid.gov/CHIP/Downloads/TX/TX-17-0043.pdf
Temporarily delay acting on certain changes in circumstances affecting CHIP eligibility	§ 457.342 (Allows states to provide continuous eligibility to children)	Submit a CHIP Disaster Relief SPA	

AVAILABLE FLEXIBILITIES	RELEVANT AUTHORITIES AND SOURCES ^a	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLES
4. Verification			
Accept self-attestation and conduct post-enrollment verification	42 CFR § 435.945(a) 42 CFR § 435.952 42 CFR § 457.380	Document in the state's Verification Plan.	
Accept self-attestation for all eligibility criteria, excluding verification of citizenship and immigration status, on case-by-case basis when documentation is not available	42 CFR § 435.945(a) (Authorizes the acceptance of self-attestation for eligibility verification, unless statute expressly requires documentation, e.g., for citizenship/immigration status) 42 CFR § 435.952(c)(3) (Requires, on a case-by-case basis, that self-attestation for all eligibility criteria be accepted when documentation is not reasonably available to the individual during a natural disaster or other reason, unless statute expressly requires documentation)	Document policy in compliance with state's record keeping practices and seek concurrence from CMS. Document verification policy in applicant's case record.	
Accept self-attestation for citizenship and immigration status if the state is unable to verify eligibility using data sources and the beneficiary is unable to provide citizenship or immigration status documentation due to the disaster	42 CFR 435.407 (Outlines specific documentation requirements for verifying citizenship) SSA § 1115	Submit 1115 waiver request	Hurricane Katrina SHO (#05-001) (9/16/05), https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-05-001.pdf
Adopt a new or broader reasonable compatibility standard for inconsistencies in income when the self-attested income is at or below, and the income obtained electronically is above the applicable income standard	42 CFR § 435.945(a) 42 CFR § 435.952 42 CFR § 457.380	Document in the state's Verification Plan.	

AVAILABLE FLEXIBILITIES	RELEVANT AUTHORITIES AND SOURCES ^a	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLES
Allow individuals to provide a reasonable explanation of inconsistencies in lieu of requiring paper documentation	42 CFR § 435.945(a) 42 CFR § 435.952 42 CFR § 457.380	Document in the state's Verification Plan.	
Allow for extensions to the reasonable opportunity period to provide documentation of immigration status verification	42 CFR § 435.956(b)(2)(B) (Allows state to extend reasonable opportunity period for individuals in a satisfactory immigration status if individual is making good faith effort to obtain documents or state needs more time to verify eligibility)	Submit SPA.	
Allow for self-attestation of resources for individuals whose financial institutions are unable to provide verification of resources due to disaster.	42 CFR § 435.945(a) (Authorizes the acceptance of self-attestation for eligibility verification, unless statute expressly requires documentation, e.g., for citizenship/immigration status) 42 CFR § 435.952(c)(3) (Requires, on a case-by-case basis, that self-attestation for all eligibility criteria be accepted when documentation is not reasonably available to the individual during a natural disaster or other reason, unless statute expressly requires documentation)	Document policy in compliance with state's record keeping practices and seek concurrence from CMS. Document verification policy in applicant's case record.	
Allow for self-attestation of incurred medical expenses (needed to meet spend-down for purposes of medically needy eligibility)	42 CFR § 435.945(a) (Authorizes the acceptance of self-attestation for eligibility verification, except for citizenship/immigration status) 42 CFR § 435.952(c)(3) (Allows for, on a case-by-case basis, self-attestation for all eligibility criteria when documentation does not exist during a natural disaster or other reason)	Document policy in compliance with state's record keeping practices and seek concurrence from CMS. Document verification policy in applicant's case record.	

AVAILABLE FLEXIBILITIES	RELEVANT AUTHORITIES AND SOURCES ^a	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLES
Temporarily suspend periodic data checks of unemployment, SWICA, TALX, or other data as applicable	42 CFR § 435.945(a) (Authorizes the acceptance of self-attestation for eligibility verification, except for citizenship/immigration status) 42 CFR § 435.952(c)(3) (Allows for, on a case-by-case basis, self-attestation for all eligibility criteria when documentation does not exist during a natural disaster or other reason) 42 CFR § 457.380 (Establishes state authority to adopt eligibility standards for CHIP program)	Update the state’s Verification Plan and/or document in the case record when used on a case-by-case basis. Document verification policy in applicant’s case record.	
CHIP-Specific Authorities			
Extend deadlines for submitting verification at renewal	42 CFR 457.343	Submit a CHIP Disaster Relief SPA.	Texas CHIP SPA TX-17-0043 (8/31/17), https://www.medicaid.gov/CHIP/Downloads/TX/TX-17-0043.pdf
Temporarily suspend specified verification requirements at application and renewal	42 CFR 457.343 42 CFR 457.380	Submit a CHIP Disaster Relief SPA.	Texas CHIP SPA TX-17-0043 (8/31/17), https://www.medicaid.gov/CHIP/Downloads/TX/TX-17-0043.pdf

^a The authorities listed identify either the statutory or regulatory authority authorizing the flexibility described or the statutory or regulatory provision which imposes a limitation which must be waived in order to adopt the flexibility described as well as the type of waiver authority needed.

TABLE B: BENEFICIARY COST SHARING

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Medicaid			
Modify application of co-payments applied under state plan.	SSA § 1902(a)(17) (Requires reasonable financial standards and methods and comparability in determining eligibility) SSA § 1902(a)(14) (Requires cost sharing to be imposed only as required under SSA 1916 and 1916A)	Amend cost sharing SPA if suspending co-payments statewide. Submit 1115 waiver request if suspending co-payment only for beneficiaries in disaster-specific areas.	Hurricane Katrina SHO (#05-001) (9/16/05), https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-05-001.pdf Flint Approval Letter and STCs (3/3/16), https://www.michigan.gov/documents/mdhhs/CMS_Approval_-_Flint_Waiver_3-3-16_516241_7.pdf
Exempt individuals subject to a disaster from payment of premiums	42 CFR 447.55(b)(4) (Allows for premiums to be waived were the agency determines payments will create an undue hardship for the individual or family)	Document reason for not requiring premium payment in enrollee’s case record. Document policy in compliance with state’s record keeping practices and seek concurrence from CMS.	Flint Approval Letter and STCs (3/3/16), https://www.michigan.gov/documents/mdhhs/CMS_Approval_-_Flint_Waiver_3-3-16_516241_7.pdf
Excuse state from mandate to reduce payments to medical institutions and to intermediate care facilities for individuals with intellectual disabilities for the medical assistance provided by the amount of available income such individuals have based on post-eligibility treatment of income (PETI)	SSA § 1902(a)(17) (Requires reasonable standards and comparability in determining eligibility and the amount of medical assistance)	Submit 1115 waiver request.	

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
CHIP			
Temporarily suspend application of co-payments.	Section 2103(e)(1)(A) of the Act; 42 CFR 457.515 (Provides states with authority to define the group or groups of individuals subject to cost sharing and the amount of charges imposed)	Submit a CHIP Disaster Relief SPA.	Texas CHIP SPA TX-17-0043 (8/31/17), https://www.medicare.gov/CHIP/Downloads/TX/TX-17-0043.pdf
Suspend or delay collection of enrollment fees for families approved for coverage or renewal	Section 2103(e)(1)(A) of the Act; 42 CFR 457.510 (Provides states with authority to define the group or groups of individuals subject to premiums and/or enrollment fees and the amount of charges imposed)	Suspension of enrollment fees applies to families determined eligible, but whose enrollment is pending payment of fee. Submit a CHIP Disaster Relief SPA.	Texas CHIP SPA TX-17-0043 (8/31/17), https://www.medicare.gov/CHIP/Downloads/TX/TX-17-0043.pdf California Wildfires Approval Letter (1/30/18)
Temporarily suspend application of premiums (and/or waive premium balances) for enrollees who meet certain income and other eligibility requirements	Section 2103(e)(1)(A) of the Act; 42 CFR 457.510 (Provides states with authority to define the group or groups of individuals subject to premiums and/or enrollment fees and the amount of charges imposed)	Submit a CHIP Disaster Relief SPA.	

TABLE C: BENEFITS

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Limit provision of Medicaid benefits to specific eligibility groups impacted by a disaster.	SSA § 1902(a)(1) (Requires services to be provided on a statewide basis) 1902(a)(10) (Requires making benefits available to all individuals within the same eligibility category) SSA § 1115	Submit 1115 waiver request.	Flint Approval Letter and STCs (3/3/16), https://www.michigan.gov/documents/mdhhs/CMS_Approval_-_Flint_Waiver_3-3-16_516241_7.pdf Hurricane Katrina SHO (#05-001) (9/16/05), https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-05-001.pdf
Offer additional optional benefits not currently provided under the State Plan that are comparable for all categorically needy eligibility groups, statewide and have free choice of provider or Alternative Benefit Plan, statewide that has at a minimum free choice of provider.	SSA § 1902 SSA § 1937	Submit amended State Plan Amendment for the traditional state plan or an Alternative Benefit Plan.	
Re-evaluate amount, scope or duration of mandatory or optional benefits	SSA § 1902	Submit amended State Plan or Alternative Benefit Plan, if applicable.	
For territories that have limited “off-island” benefit package: authorize “off-island” State Plan medical coverage for beneficiaries eligible for the FEMA Transitional Shelter Assistance program and who are temporarily relocated to a state	SSA § 1115	<i>Example:</i> Puerto Rico’s State Plan only provides coverage for emergency services off-island. 1115 expenditure authority allows Medicaid beneficiaries to receive off-island coverage as defined in the State Plan. Submit 1115 expenditure authority request.	Puerto Rico 1115 Approval Letter (11/28/17), https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/pr/pr-disaster-relief-ca.pdf

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Provide nursing facility care to evacuees in the host state if their institutional stay is less than 30 days and the individual has established Medicaid eligibility in their home state	SSA § 1135	Submit 1135 waiver request.	Louisiana 1135 Approval Letter (9/21/17)
C4. 1915(c) Benefits			
Modify 1915(c) service, scope or coverage	1915(c) waiver Appendix K	Submit Appendix K.	Texas 0221.R05.03 Appendix K (approved 10/31/17)
Add services to a 1915(c) waiver to address the emergency situation that are necessary to assist a waiver participant to avoid institutionalization and live in the community	1915(c) waiver Appendix K	Appendix K includes a list of example supplemental support services that may be provided under an emergency (for example, emergency counseling, heightened case management to address emergency needs, emergency medical supplies and equipment, individually directed goods and services) Submit Appendix K.	
Modify the person-centered service plan development process and individual(s) responsible for person-centered service plan development for 1915(c) enrollees	1915(c) waiver Appendix K	Modifications should include emergency specific risk assessment and mitigation techniques. Submit Appendix K.	California 0141.R05.03 Appendix K (approved 12/22/17)
Institute or expand opportunities for self-direction for 1915(c) enrollees, or expand decision making authority	1915(c) waiver Appendix K	Submit Appendix K.	

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Expand 1915(c) waiver service settings, including to out-of-state settings	1915(c) waiver Appendix K	Submit Appendix K.	Louisiana 0866.R01.02 Appendix K (approved 10/3/17)
Permit payment for 1915(c) waiver services rendered by family caregivers or legally responsible individuals	1915(c) waiver Appendix K	Submit Appendix K.	
Allow for payment for services for purposes of supporting 1915(c) enrollees in acute care hospital or short-term institutional stay	1915(c) waiver Appendix K	Submit Appendix K.	
Include retainer payments to personal care assistants when a 1915(c) enrollee is hospitalized or absent from their home for a period of no more than 30 days	1915(c) waiver Appendix K	Available for personal care and habilitation services. Submit Appendix K.	California 0336.R03.02 Appendix K (approved 1/18/18)
C5. Authorizations			
Medicaid Authorizations			
Temporarily suspend Medicaid fee-for-service prior authorization requirements	SSA § 1135(b)(1)(C) (Allows for a waiver or modification of pre-approval requirements if prior authorization processes are outlined in detail in a State Plan for particular benefits)	Submit 1135 waiver request.	California Wildfires Approval Letter (1/30/18)
Require fee-for-service providers to extend prior authorizations through the termination of the emergency declaration	SSA § 1135	Submit 1135 waiver request.	Texas 1135 Approval Letter (9/13/17)
LTSS and 1915(c) Authorizations			
Temporarily suspend pre-admission screening and annual resident review (PASSARR) Level and Level II Assessments for 30 days	SSA § 1135	Submit 1135 waiver request.	Louisiana 1135 Approval Letter (9/21/17)

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Temporarily suspend 1915(c) prior authorization requirements	1915(c) waiver Appendix K	Submit Appendix K.	California Wildfires Approval Letter (1/30/18)
Extend medical necessity or level of care authorizations for 1915(c) recipients	1915(c) waiver Appendix K	Extensions cannot exceed 12 months beyond initial reevaluation deadline. Submit Appendix K.	Texas 1135 Approval Letter (9/13/17) California 0141.R05.03 Appendix K (approved 11/22/17)
Extend minimum data set authorizations for nursing facility and SNF residents	SSA § 1135 waiver	Submit 1135 waiver request.	Texas 1135 Approval Letter (9/13/17)

TABLE D: ADVERSE ACTIONS AND FAIR HEARINGS

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Medicaid			
Suspend adverse actions for individuals in the disaster area for whom the state has completed a determination but not yet sent notice (e.g., due to inability to deliver mail) or who state believes likely did not receive notice (e.g., evacuation)	42 CFR 431.211 (Requires minimum 10 days advance notice before taking adverse action)	<p>Document policy in compliance with state’s record keeping practices and seek concurrence from CMS.</p> <p>This flexibility would likely apply to a very small set of cases for which the state had not sent required notice at the time of the disaster. See above for additional flexibilities related to redeterminations.</p>	
Delay scheduling of fair hearings and issuing fair hearing decisions	42 CFR § 431.244(f)(4)(i)(B) Allows the agency to take final administrative action outside of timeline set in regulation when there is an administrative or other emergency beyond the agency’s control.	<p>Document reason for delay in enrollee’s case record.</p> <p>Document policy in compliance with state’s record keeping practices and seek concurrence from CMS.</p> <p>If this exception to general fair hearing timeliness standards is invoked, state should prioritize completing hearings requested by beneficiaries who stand to suffer the most harm from delay, specifically those who meet the standard for an expedited fair hearing under 42 CFR 431.224.</p>	

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Reinstate services or eligibility if services or eligibility are discontinued because beneficiary's whereabouts were unknown due to evacuation, after whereabouts become known (if beneficiary is still eligible)	42 CFR § 431.231(d) (Requires reinstatement of services if whereabouts were unknown but later become known)	Document policy in compliance with state's record keeping practices and seek concurrence from CMS.	
Allows enrollees to proceed directly to a state fair hearing without having a managed care plan resolve the appeals; state would modify the timeline for managed care plans to resolve appeals to zero days so that the impacted appeals immediately satisfy the exhaustion requirement	42 CFR 438.402(c)(1)(i)(A), 42 CFR 438.408(c)(3), and 42 CFR 408(f)(1)(i) (Deemed exhaustion of appeals processes) SSA § 1135 waiver	Submit 1135 waiver request.	California 1135 Approval Letter (10/20/17)
Allow enrollees to have more than 120 (if a managed care appeal) or 90 days (eligibility or fee-for-service appeal) to request a state fair hearing	42 CFR 438.408(f)(2) (Requires enrollees to request a state fair hearing no later than 120 days from the date of a managed care plan notice of resolution), 42 CFR 431.221(d) SSA § 1135 waiver	Submit 1135 waiver request.	California 1135 Approval Letter (10/20/17)

TABLE E: MEDICAID MANAGED CARE

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
E1. Prior Authorizations			
Temporarily suspend prior authorization requirements	42 CFR 438.210(b)-(d) (Requires managed care contracts to specify the prior authorization requirements between the State and the managed care plan.)	Amend managed care plan contract.	
Require managed care plans to extend prior authorizations through the termination of the emergency declaration	42 CFR 438.210(b)	Amend managed care plan contract.	
Require managed care plans to expedite processing of new prior authorizations and allow flexibility in documentation (e.g., physician signatures)	<p>42 CFR 438.210(d) (Provides for authorization decisions that are within state-established timeframes; the regulation does not prohibit states from requiring authorization decisions that are more expeditious than the timeframes provided in the regulation)</p> <p>42 CFR 438.210(b) (Provides that for the processing of requests for initial and continuing authorizations of services, the contract must require managed care plans to have in place, and follow, written policies and procedures, and that managed care plans have in effect mechanisms to ensure the consistent application of review criteria for authorization decisions)</p>	Amend managed care plan contract.	

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
E2. Provider Network			
Temporarily suspend out-of-network requirements for managed care enrollees	42 CFR 438.206(b)(4) (Requires the provision of access to services when the provider network is unable to provide necessary services covered under the contract to a specific enrollee)	Amend managed care plan contract.	
E3. Care Management Initial Screening			
Provide managed care plans flexibility with the timeframe of conducting an initial care management screening of each enrollee's needs if they've demonstrated "a best effort" to reach out to the enrollee	42 CFR § 438.208(b)(3) (Requires plans to make a best effort to conduct an initial screening within 90 days)	Document reason for delay in enrollee's case record.	California Wildfires Approval Letter (1/30/18)

TABLE F: PROVIDER ENROLLMENT AND PARTICIPATION

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Medicaid			
Temporarily waive payment of application fee to temporarily enroll a provider	42 CFR 455.460 (Requires state to collect application fee prior to enrolling provider) SSA § 1135	Submit 1135 waiver request.	California 1135 Approval Letter (10/20/17) Florida 1135 Approval Letter (9/11/17)
Temporarily waive criminal background checks associated to temporarily enroll a provider	42 CFR 455.434 (Requires providers to consent to criminal background checks for provider enrolment) SSA § 1135	Submit 1135 waiver request.	California 1135 Approval Letter (10/20/17) Florida 1135 Approval Letter (9/11/17)
Temporarily waive site visits to temporarily enroll a provider	42 CFR 455.432 (Requires state to conduct a pre and post-enrollment site visit of providers who are designated as ‘moderate’ or ‘high’ categorical risks) SSA § 1135	Submit 1135 waiver request.	California 1135 Approval Letter (10/20/17) Florida 1135 Approval Letter (9/11/17)

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Permit providers located out of state/territory to provide care to a disaster state's Medicaid enrollee	SSA § 1135	The following conditions must be met: the service was provided outside the geographical boundaries of the state/territory's Medicaid plan; the NPI is presented on the claim; the furnishing provider is enrolled and in an approved status in Medicare or in another state/territory's Medicaid program; the claim represents services furnished; and the claim is a single instance of care over a 180 day period or multiple instances of care to a single participant over a 180 day period Submit 1135 waiver request.	California 1135 Approval Letter (10/20/17) Florida 1135 Approval Letter (9/11/17)
Streamline provider enrollment requirements when enrolling providers	SSA § 1135	Submit 1135 waiver request.	California 1135 Approval Letter (10/20/17) Florida 1135 Approval Letter (9/11/17)
Temporarily cease revalidation of providers who are located in state or otherwise directly impacted by the disaster	SSA § 1135	Submit 1135 waiver request.	California 1135 Approval Letter (10/20/17) Florida 1135 Approval Letter (9/11/17)

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Temporarily waive requirement that physicians and other health care professionals be licensed in the state in which they are providing services, so long as they have equivalent licensing in another state	SSA § 1135 1135 Waiver - At A Glance, https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/1135-Waivers-At-A-Glance.pdf	For purposes of reimbursement only. State law governs whether a non-federal provider is authorized to provide services in the state without state licensure. Providers must not be affirmatively excluded from practice in the state or in any state that is included in the emergency area. Submit 1135 waiver request.	
Temporarily suspend pending enforcement or termination action or denial of payment sanction to a specific provider	SSA § 1135 waiver Provider Survey and Certification FAQs, https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/All-Hazards-FAQs.pdf	Action or sanctions may be suspended but not waived. Each pending enforcement action will be reviewed on a case-by-case basis. Submit 1135 waiver request.	
Provide payments to facilities for providing services in alternative settings, including an unlicensed facility, if the provider's licensed facility has been evacuated	SSA § 1135 waiver	<i>Example:</i> Allow nursing facilities to be reimbursed for services rendered in a temporary shelter; allow reimbursement for dialysis provided to patients with kidney failure in an alternate setting. Submit 1135 waiver request.	California Wildfires Approval Letter (1/30/18)
Temporarily allow non-emergency ambulance suppliers	SSA § 1135 waiver	Submit 1135 waiver request.	Louisiana 1135 Provider Enrollment Letter (9/1/17), https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/pr/pr-disaster-relief-ca.pdf

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Temporarily modify 1915(c) waiver provider types, provider qualifications, and licensure or other requirements for settings where waiver services are furnished	1915(c) waiver Appendix K	Submit Appendix K.	Texas 0181 .R05.07 Appendix K (approved 10/31/17)
CHIP			
Provide payments to facilities not certified to participate in CHIP if they provide services to CHIP enrollees	SSA § 1115 waiver	Submi 1115 waiver request.	Hurricane Katrina SHO (#05-001) (9/16/05), https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-05-001.pdf

TABLE G: MEDICAID FINANCE AND REIMBURSEMENT

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
G1. General Requirements			
Temporarily suspend requirement that state pays a percentage of clean claims within 30 days and 90 days of receipt	42 CFR § 447.45(e)	Submit to CMS proposed revised deadlines and timetables for claims processing.	California Wildfires Approval Letter (1/30/18)
G2. 1915(c)			
Temporarily increase payment rates for 1915(c) waiver services with no changes to rate methodology and with no impact on cost neutrality	Already permitted within scope of 1915(c) waiver.	N/A	
Temporarily increase payment rates for 1915(c) waiver services with temporary change to rate methodology and/or with impact on cost neutrality	1915(c) waiver Appendix K amendment	Submit Appendix K.	

N/A = Not available.

TABLE H: REPORTING AND OVERSIGHT

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Adjust performance deadlines and timetables for required activities	SSA § 1135 waiver 1135 Waiver - At A Glance, https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/1135-Waivers-At-A-Glance.pdf	Deadlines may be adjusted but not waived. Submit 1135 waiver request.	
Modify deadlines for OASIS and Minimum Data Set (MDS) assessments and transmission	SSA § 1135 waiver	Submit 1135 waiver request.	Hurricane Irma 1135 Approval Letter (9/11/17) , https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/QAs-FL-Irma-1135-Waivers.PDF
Temporarily delay or suspend onsite re-certification and revisit surveys, and some enforcement actions, and/or allow additional time for facilities to submit plans of correction	SSA § 1135 waiver	Submit 1135 waiver request.	Hurricane Irma 1135 Approval Letter (9/11/17) , https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/QAs-FL-Irma-1135-Waivers.PDF
Temporarily suspend 2-week aide supervision requirement by a registered nurse for home health agencies	SSA § 1135 waiver	Submit 1135 waiver request.	Hurricane Sandy 1135 Blanket Waivers (11/3/12) , https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/1135-Blanket-Waivers-Approved-for-NY-NJ.pdf

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
Temporarily suspend supervision of hospice aides by a registered nurse every 14 days requirement for hospice agencies	SSA § 1135 waiver	Submit 1135 waiver request.	Hurricane Sandy 1135 Blanket Waivers (11/3/12) , https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/1135-Blanket-Waivers-Approved-for-NY-NJ.pdf
Temporarily modify 1915(c) requirements for incident reporting, medication management, or other enrollee safeguards	1915(c) waiver Appendix K amendment	Submit Appendix K.	
Modify or suspend certain state survey agency activities	SSA § 1135 waiver Provider Survey and Certification FAQs, https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/All-Hazards-FAQs.pdf	CMS will review each pending action on a case-by-case basis to determine if there are activities that need to be completed by the CMS regional office while survey activities are suspended. Submit 1135 waiver request for blanket authority.	

TABLE I: HIPAA COMPLIANCE

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
<p>Temporarily suspend application of sanctions and penalties arising from non-compliance with HIPAA requirements to/related to:</p> <ul style="list-style-type: none"> • Obtain a patient's agreement to speak with family members or friends; • Honor a request to opt out of the facility directory; • Distribute a notice; • The patient's right to request privacy restrictions; • The patient's right to request confidential communications. 	<p>SSA § 1135 waiver</p> <p>1135 Waiver - At A Glance, https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/index.html</p>	<p>Waivers for HIPAA requirements are limited to the 72-hour period beginning upon implementation of a hospital disaster protocol.</p>	

TABLE J: EMTALA REQUIREMENTS

AVAILABLE FLEXIBILITIES	AUTHORITIES AND SOURCES	NOTES ON IMPLEMENTATION AND NECESSARY STATE ACTION	SELECT STATE EXAMPLE
<p>Temporarily suspend application of 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 of the declared emergency</p>	<p>SSA § 1135 1135 Waiver - At A Glance, https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/1135-Waivers-At-A-Glance.pdf</p>	<p>Waivers for public health emergencies that do not involve a pandemic disease are limited to 72 hours from implementation of a hospital disaster protocol. Waivers for emergencies that involve a pandemic disease last until termination of the pandemic-related emergency.</p> <p>Hospitals that activate their disaster plan and are invoking EMTALA waiver of sanctions must provide notice to their state survey agency.</p> <p>Submit 1135 waiver request.</p>	