MAC Coverage Learning Collaborative

Disaster Preparedness Toolkit for State Medicaid Agencies

August 20, 2018

I. 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 on the strategies available to support Medicaid operations and enrollees in times of crisis. Those tools are:

(1) This memorandum which provides a high-level summary of the types of Medicaid and CHIP strategies that can be deployed by states and Territories. It is organized by operational area—eligibility and enrollment, benefits and cost sharing and provider workforce—and provides examples of how the strategies were used by other states and Territories. The memorandum also provides a review of the legal authorities that are available to effectuate various strategies, ranging from changes to State Plan Amendments to obtaining an 1135 Waiver. Finally, Appendix A provides a snapshot summary of the strategies, legal authorities and state examples.

(2) A companion inventory of the various strategies available to states and the action needed to effectuate them. Based on interviews with federal officials and a review of federal statute, regulation and approved 1135 and 1115 demonstrations, 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 inventory provides significantly more detail on available options than the memorandum.

Together, these two tools—the memorandum and inventory—should serve as a comprehensive disaster preparedness resource for states and Territories to have at their fingertips.

In addition to reviewing these tools in advance of a disaster, CMS strongly recommends Medicaid agencies proactively develop disaster preparedness operational protocols for contacting and coordinating with state Medicaid agency personnel. 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 the Center for Medicaid and CHIP Services (CMCS) and the Consortium for Medicaid and Children's Health Operations 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.

II. Responding to Specific Disaster-Related Problems

A. Bolstering Eligibility and Enrollment Processes

When a disaster hits, a state Medicaid agency's capacity to process applications and make eligibility determinations may become compromised. Loss of power and down phoned lines may disable eligibility and/or verification systems. State Medicaid eligibility workers may experience their own personal hardships impacting their ability to travel to work. States may also be unable to process redeterminations, risking loss of coverage for those whose redetermination deadline comes during a time when systems are down. Further, individuals displaced from their homes may not have access to needed documents to verify their eligibility or be able to receive mail or other consumer notices. In recognition of these challenges, a number of strategies are available to support ongoing eligibility and enrollment during a disaster. States or Territories may:

- Allow self-attestation for all eligibility criteria (excluding citizenship and immigration status) on a case-by-case basis for individuals subject to a disaster when documentation is not available.
- Modify Medicaid/CHIP verification processes (e.g, accept self attestation, adopt or increase reasonable compatibility thresholds).
- Consider Medicaid/CHIP enrollees who are evacuated from the state as "temporarily absent" when assessing residency in order to maintain enrollment.
- Increase eligibility levels for specific categories within specific geographic regions.
- Extend redetermination timelines for current enrollees subject to a disaster to maintain continuity of coverage.
- Adopt presumptive eligibility for eligible populations.
- Modify eligibility requirements for enrollment in 1915(c) waivers to service additional individuals under the waiver.
- Allow enrollees to have more than 120 days (in the case of a managed care appeal) or 90 days (in the case of an eligibility or fee-for-service appeal) to request a fair hearing.

1. Select State Example

After Hurricane Harvey flooded parts of **Texas** in 2017, the State submitted a **CHIP State Plan Amendment** that allowed the State to maintain CHIP enrollees' access to services beyond the end of their redetermination periods.

B. Ensuring Access to Needed Services: Benefits and Cost Sharing

The damage to infrastructure caused by large-scale disasters often creates new health care needs for Medicaid enrollees. Poor access to clean drinking water is associated with increased health risks, as is living or working in damaged structures. Lack of electrical power can exacerbate chronic health conditions, particularly in tropical climates and particularly for the elderly and disabled. Further, enrollees may struggle to pay co-payments or premiums during crises. In recognition of these challenges, a number of strategies are available to support continued access to services during a disaster. States or Territories may:

- Offer additional optional benefits not currently provided under the State Plan or Alternative Benefit Plan.
- Provide benefits to a targeted group of enrollees impacted by a disaster.
- Add services to a 1915(c) waiver that are not expressly authorized in statute (so long as the state can demonstrate the service is necessary to assist a waiver participant to avoid institutionalization and function in the community).
- Waive service prior authorization requirements in fee-for-service or managed care.
- Temporarily modify requirements for co-payments to support access to services for Medicaid or CHIP enrollees.
- Exempt individuals subject to a disaster from payment of premiums to support access to services for Medicaid/CHIP.

1. Select State Examples

Following the 2017 wildfires in **California**, the State waived or modified prior authorization requirements for State Plan and Waiver services, which included extending existing prior authorizations or allowing enrollees to access services without prior authorization. Similarly, **Texas** used an 1135 Waiver to require managed care organizations to extend existing prior authorizations for at least 90 days, and up to 180 days up to the last day of the emergency period for plan members living in a FEMA-declared disaster county.

C. Bolstering the Provider Workforce

Despite increased need, services can be difficult to access during a disaster. Provider facilities may be damaged, evacuated or otherwise inaccessible. Health care provider staff may experience their own hardships making them unavailable to provide care to enrollees. States or Territories may leverage a number of strategies to ensure there are adequate providers to meet the demands of Medicaid enrollees. States or Territories may:

- Temporarily waive provider screening requirements to ensure a sufficient number of providers are available to serve Medicaid enrollees. Such requirements include the payment of application fees, criminal background checks, or site visits.
- Temporarily cease the revalidation of providers who are located in-state or otherwise directly impacted by a disaster.
- Temporarily waive requirements that out-of-state providers be licensed in the state or Territory in which they are providing services when they are licensed by another state Medicaid agency or by Medicare.
- Allow facilities to provide services in alternative settings, such as a temporary shelter, when a provider's facility is inaccessible.

1. Select State Examples

After emergencies were declared in **Florida** in response to Hurricane Irma and in **California** in response to 2017 wildfires, both states used **1135 Waiver** authority to waive provider screening requirements to enroll new Medicaid providers provisionally and temporarily, including payment of application fee, criminal background checks, site visits, and in-state or Territory licensure requirements.

III. Overview of Disaster-Related Legal Authorities

The following provides a high-level summary of the various legal authorities a state or Territory would pursue depending on the strategy it seeks to implement.

- **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.

APPENDIX A
Example Strategies, Relevant Legal Authorities and Select State Examples

STRATEGY	RELEVANT LEGAL AUTHORITY	SELECT STATE EXAMPLES
Eligibility and Enrollment		
Allow self-attestation for all eligibility criteria (excluding citizenship and immigration status) on a case-by-case basis for individuals subject to a disaster when documentation is not available.	Authorized under existing regulations 42 CFR §§ 435.945(a), 435.952(c)(3)	
Modify Medicaid/CHIP verification processes (e.g, accept self attestation, adopt or increase reasonable compatibility thresholds).	Verification Plan	
Consider Medicaid/CHIP enrollees who are evacuated from the state as "temporarily absent" when assessing residency in order to maintain enrollment (for home state where disaster occurred or public health emergency exists)	Authorized under existing regulation 42 CFR § 403(j)(3) and 42 CFR 457.320(e)	
Increase eligibility levels for specific categories within specific geographic regions	1115 Demonstration	1115 Demonstration: New York Disaster Relief Medicaid
Extend redetermination timelines for current enrollees subject to a disaster to maintain continuity of coverage.	Authorized under existing regulations 42 CFR § 431.211, 42 CFR § 435.912(e)(2), and 42 CFR § 435.930	
Adopt presumptive eligibility for eligible populations.	Presumptive Eligibility State Plan Amendment	
Modify additional 1915(c) enrollee targeting criteria in order to serve additional individuals.	1915(c) Waiver Appendix K	
Allow enrollees to have more than 120 days (in the case of a managed care appeal) or 90 days (in the case of an eligibility or fee-for-service appeal) to request a fair hearing.	1135 Waiver	

STRATEGY	RELEVANT LEGAL AUTHORITY	SELECT STATE EXAMPLES
Benefits and Cost Sharing		
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.	State Plan or Alternative Benefit Plan	
Provide benefits to a targeted group of enrollees impacted by a disaster.	1115 Demonstration	Flint Approval Letter and STCS (3/3/16)
Add services to a 1915(c) waiver that are not expressly authorized in statute (so long as the state can demonstrate the service is necessary to assist a waiver participant to avoid institutionalization and function in the community).	1915(c) Waiver Appendix K	
Waive service prior authorization requirements in fee-for-service or managed care.	1135 Waiver (fee-for-service) Managed care contract (managed care)	California Wildfires Approval Letter (1/30/18)
Temporarily modify requirements for co-payments to support access to services for Medicaid or CHIP enrollees.	Medicaid Cost Sharing State Plan Amendment if applying modifications statewide 1115 Demonstration if *not* applying modifications statewide CHIP State Plan Amendment for either statewide or disaster-affected individuals	Flint Approval Letter and STCS (3/3/16)
Exempt individuals subject to a disaster from payment of premiums to support access to services for Medicaid or CHIP	Authorized under existing regulation at 42 CFR § 447.55(b)(4); 42 CFR 457.510	

STRATEGY	RELEVANT LEGAL AUTHORITY	SELECT STATE EXAMPLES
Provider Workforce		
Temporarily waive provider enrollment requirements to ensure a sufficient number of providers are available to serve Medicaid enrollees. Such requirements include the payment of application fees, criminal background checks, or site visits.	1135 Waiver	California Wildfires 1135 Approval Letter (10/20/17) Florida Hurricanes 1135 Approval Letter (9/11/17)
Temporarily cease the revalidation of providers who are located in- state or otherwise directly impacted by a disaster.	1135 Waiver	California Wildfires 1135 Approval Letter (10/20/17) Florida Hurricane 1135 Approval Letter (9/11/17)
Temporarily waive requirements that physicians and other health care professionals be licensed in the state or territory in which they are providing services, so long as they have equivalent licensing in another state.	1135 Waiver *For purposes of reimbursement only. State law governs whether a non-federal provider is authorized to provide services in the state without state licensure.*	
Allow facilities to provide services in alternative settings, such as a temporary shelter, when a provider's facility is inaccessible.	1135 Waiver	California Wildfires Approval Letter (1/30/18)