



April 20, 2020

Alex M. Azar II, Secretary
The U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

In light of the public health emergency resulting from the impact of COVID-19 on the State of Texas, the state urgently requests a waiver or modification of certain requirements of the Act pursuant to authority in Social Security Act Section 1115. HHSC requests approval to implement the following flexibilities up through the end of the disaster period. Based on the evolving situation, HHSC continues to determine the most appropriate timeframe for each waiver or modification, which is not to exceed the disaster period.

Specifically, the state requests waiver or modification of the following:

1. Waive the requirements of 42 CFR 441.302(c)(2) requiring at least annual evaluations of Level of Care (LOC). The state requests to extend long term services and supports (LTSS) medical necessity/LOC authorizations that are set to expire for at least 90 days but no more than one year for individuals in STAR+PLUS and STAR Kids.
2. Waive any requirements necessary to extend LTSS service authorizations set to expire for at least 90 days but no more than one year for individuals in STAR+PLUS and STAR Kids.

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3. Waive the requirements of 42 CFR 438.208(c) and 441.301(c) (3) and (4) relating to person-centered service plans completed annually. The state requests to extend individual service plans (ISPs) set to expire for at least 90 days but no more than one year for individuals in STAR+PLUS and STAR Kids.
4. Waive the requirements of 42 CFR 431.230 and 42 C.F.R. 438.420 to extend to 30 days the deadline to request a state fair hearing with continuation of benefits. Currently individuals must request the continuation of services within 10 calendar days of receipt of notice of action. This waiver will apply to all fair hearing requests for managed care and fee-for-service state plan and waiver services (including the STAR Kids Medically Dependent Children Program (MDCP), STAR+PLUS HCBS) and eligibility determinations.
5. Waive the requirements of 42 C.F.R. 438.408 to allow individuals an additional 30 days to request a fair hearing after exhausting the managed care appeal process. Individuals normally have 120 days to request a fair hearing after the internal MCO appeal. This will extend the timeframe to 150 days.
6. Waive the requirements of 42 C.F.R. 438.402 to allow individuals an additional 30 days to submit a managed care appeal request. Individuals normally have 60 days to request an MCO appeal. This will extend the timeframe to 90 days.
7. Waive the requirements of 42 CFR 431.244(f) to extend HHSC's deadline for the agency to take final administrative action to 120 days after the date the MCO appeal process has been exhausted or the date the agency receives a request for a fair hearing. Currently the agency has 90 days to take final action.
8. Waive the requirements of 42 CFR 438.408(b)(2) to provide MCOs an additional 30 days to resolve standard appeals statewide, for a total of 60 days. Today, MCOs have 30 days to resolve standard appeals.

9. Waive the requirements of 42 CFR 438.406(b)(3) that a member appealing to an MCO must provide a written request for an appeal that has been requested orally.
10. Waive any requirements of the state plan or 1115 that require face-to-face contacts to allow the services and appropriate assessments to be performed by telehealth, telemedicine, or telephonic contact as consistent with state law and subject to HHSC requirements.
11. Extend or allow the state to waive any requirements for the signature of a physician, DME provider, or Medicaid recipient.
12. Allow Texas Medicaid to reimburse pharmacies for the administration of flu vaccines, long acting antipsychotics, and drugs used to treat substance use disorder or opioid dependency.
13. Allow the state to suspend releasing individuals from waiver interest lists. When an individual's name is released from the STAR+PLUS HCBS waiver interest list, a face-to-face assessment must be conducted to determine the individual's eligibility for the waiver program.
14. Allow individuals who will no longer be eligible for the STAR Kids program due to turning 21 during the COVID-19 pandemic to stay in STAR Kids rather than transitioning to STAR+PLUS to comply with House Resolution (H.R.) 6201 (116th Congress, 2019-2020; Public Law No: 116-127).

The state requests that these waivers and modifications become effective at the earliest possible date; be retroactive in Texas to the dates of the declarations cited in the paragraph below; and continue through the period described in Section 1115. Additionally, the state is working under the authority of the blanket waivers given by CMS.

The state understands the waivers and modifications described herein apply statewide based on the President's declaration, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, of an emergency in Texas as a result of COVID-19; and your determination,

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pursuant to section 319 of the Public Health Service Act, that a public health emergency exists and has existed since March 13, 2020, as a result of COVID-19.

Your prompt action on this request will help ensure that Texans subject to this public health emergency have access to critical health care services during the emergency.

Sincerely,

Stephanie Muth
State Medicaid Director