#### DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services 7500 Security Boulevard, Mail Stop S2-26-12 Baltimore, Maryland 21244-1850



August 13, 2020

Cynthia Beane, MSW, LCSW Commissioner Bureau for Medical Services 350 Capitol Street, Room 251 Charleston, WV 25301-3706

Re: West Virginia State Plan Amendment (SPA) 20-0004

#### Dear Commissioner Beane:

We have reviewed the proposed amendment to add section 7.4 Medicaid Disaster Relief for the COVID-19 National Emergency to your Medicaid state plan, as submitted under transmittal number (TN) 20-0004. This amendment proposes to implement temporary policies, which are different from those policies and procedures otherwise applied under your Medicaid state plan, during the period of the Presidential and Secretarial emergency declarations related to the COVID-19 outbreak (or any renewals thereof).

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Social Security Act (Act). On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and this state plan provision will no longer be in effect, upon termination of the public health emergency, including any extensions.

Pursuant to section 1135(b)(5) of the Act, for the period of the public health emergency, CMS is modifying the requirement at 42 C.F.R. 430.20 that the state submit SPAs related to the COVID-19 public health emergency by the final day of the quarter, to obtain a SPA effective

date during the quarter, enabling SPAs submitted after the last day of the quarter to have an effective date in a previous quarter, but no earlier than the effective date of the public health emergency.

The State of West Virginia also requested a waiver of public notice requirements applicable to the SPA submission process. Pursuant to section 1135(b)(1)(C) of the Act, CMS is waiving public notice requirements applicable to the SPA submission process. Public notice for SPAs is required under 42 C.F.R. §447.205 for changes in statewide methods and standards for setting Medicaid payment rates, 42 C.F.R. §447.57 for changes to premiums and cost sharing, and 42 C.F.R. §440.386 for changes to Alternative Benefit Plans (ABPs). Pursuant to section 1135(b)(1)(C) of the Act, CMS is approving the state's request to waive these notice requirements otherwise applicable to SPA submissions.

These waivers or modifications of the requirements related to SPA submission timelines and public notice apply only with respect to SPAs that meet the following criteria: (1) the SPA provides or increases beneficiary access to items and services related to COVID-19 (such as by waiving or eliminating cost sharing, increasing payment rates or amending ABPs to add services or providers); (2) the SPA does not restrict or limit payment or services or otherwise burden beneficiaries and providers; and (3) the SPA is temporary, with a specified sunset date that is not later than the last day of the declared COVID-19 public health emergency (or any extension thereof). We nonetheless encourage states to make all relevant information about the SPA available to the public so they are aware of the changes.

We conducted our review of your submittal according to the statutory requirements at section 1902(a) of the Act and implementing regulations. This letter is to inform you that West Virginia's Medicaid SPA Transmittal Number 20-0004 is approved effective March 1, 2020. Please note that the effective date for the new COVID-19 testing eligibility group described at section 1902(a)(10)(A)(ii)(XXIII) of the Act is March 18, 2020. Finally, the effective date for teledentistry screening is April 1, 2020.

Enclosed is a copy of the CMS-179 summary form and the approved state plan pages.

Please contact Dan Belnap at 215-861-4273 or by email at <a href="Dan.Belnap@cms.hhs.gov">Dan.Belnap@cms.hhs.gov</a> if you have any questions about this approval. We appreciate the efforts of you and your staff in responding to the needs of the residents of the State of West Virginia and the health care community.

Sincerely,

Alissa Mooney DeBoy, Director Disabled and Elderly Health Programs Group, on behalf of Anne Marie Costello, Acting Director Center for Medicaid & CHIP Services

FORM APPROVED OMB NO. 0938-0193

		1. TRANSMITTAL NUMBER:	2. STATE:
1	TRANSMITTAL AND NOTICE OF APPROVAL OF	2 0 - 0 0 4	West Virginia
	STATE PLAN MATERIAL	3. PROGRAM IDENTIFICATION: TITL	E XIX OF THE SOCIAL
	FOR: HEALTH CARE FINANCING ADMINISTRATION	SECURITY ACT (MEDICAID)	
TO:	REGIONAL ADMINISTRATOR	4. PROPOSED EFFECTIVE DATE	
	HEALTH CARE FINANCING ADMINISTRATION	03-01-2020	
	DEPARTMENT OF HEALTH AND HUMAN SERVICES	1	
5.	TYPE OF PLAN MATERIAL (Check One)		_
	NEW STATE PLAN AMENDMENT TO BE CONSID	DERED AS NEW PLAN	AMENDMENT
	COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDM	ENT (Separate Transmittal for each amer	ndment)
6.	FEDERAL STATUTE/REGULATION CITATION:	7. FEDERAL BUDGET IMPACT:	
	42 U.S.C. §1396a(a)(13)(1997)		Unknown
	Title XIX of the Social Security Act	b. FFY <u>2020</u> \$	Unknown
8.	PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:	PAGE NUMBER OF THE SUPERSE OR ATTACHMENT (If Applicable).	EDED PLAN SECTION
	Section 7 - General Provisions 7.4 Medicaid Disaster Relief for COVID-19 National Emergency		
10.	SUBJECT OF AMENDMENT:		
	Medicaid Disasteer Relief for COVID-19 National Emergency		
11.	GOVERNOR'S REVIEW (Check One):		
	X GOVERNOR'S OFFICE REPORTED NO COMMENT	OTHER, AS SPECIFIED:	
	COMMENTS OF GOVERNOR'S OFFICE ENCLOSED		
	NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL	1	
12.	SIGNATURE OF STATE AGENCY OFFICIAL:	16. RETURN TO:	
	/s/ Cynthia Beane		
13.	TYPED NAME:	Bureau for Medical Services	
	Cynthia Beane	350 Capitol Street Room 251	
14.	TITLE:	Charleston West Virginia 25	5301
	Commissioner		
15.	DATE SUBMITTED:		
	26-May-20		
	FOR REGIONAL OFFIC	FLISE ONLY	
17	DATE RECEIVED	18. DATE APPROVED	
' ' '	May 27, 2020		
		August 13, 2020	
	PLAN APPROVED - ONE C	OPY ATTACHED	
19.	EFFECTIVE DATE OF APPROVED MATERIAL:  March 1, 2020	20. SIGNATURE OF REGIONAL OFFIC	IAL:
21.	TYPED NAME: Alissa Mooney DeBoy	22.TITLE Director, Disabled and Programs Group, on be Center for Medicaid & 0	ehalf of Acting Director,
23.	REMARKS:	Center for Medicaid & C	JULIE SELVICES
۷۵.	NEW/MAG.		

# Section 7 – General Provisions 7.4. Medicaid Disaster Relief for the COVID-19 National Emergency

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Social Security Act (Act). On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and waivers will no longer be available, upon termination of the public health emergency, including any extensions.

The State Medicaid agency (agency) seeks to implement the policies and procedures described below, which are different than the policies and procedures otherwise applied under the Medicaid State Plan, during the period of the Presidential and Secretarial emergency declarations related to the COVID-19 outbreak (or any renewals thereof), or for any shorter period described below:

Describe shorter period here.

- 1) The additional rate increase effective 3/1/20 for ambulance and dental codes will end 6/30/20
- 2) ICF Services are increased by \$10 per day effective from 3/1/2020 through 6/30/20.
- 3) 20 percent for Behavioral Health and PRTF Services as of 3/1/2020 through 6/30/20.

NOTE: States may not elect a period longer than the Presidential or Secretarial emergency declaration (or any renewal thereof). States may not propose changes on this template that restrict or limit payment, services, or eligibility, or otherwise burden beneficiaries and providers.

#### **Request for Waivers under Section 1135**

<u>X</u>	_ The age	ncy seeks the following under section 1135(b)(1)(C) and/or section 1135(b)(5) of the Act:
	a.	X SPA submission requirements – the agency requests modification of the requirement to submit the SPA by March 31, 2020, to obtain a SPA effective date during the first calendar quarter of 2020, pursuant to 42 CFR 430.20.
	b.	X Public notice requirements – the agency requests waiver of public notice requirements that would otherwise be applicable to this SPA submission. These requirements may include those specified in 42 CFR 440.386 (Alternative Benefit Plans), 42 CFR 447.57(c) (premiums and cost sharing), and 42 CFR 447.205 (public notice of changes in statewide methods and standards for setting payment rates).

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State/1	Territory	: _West Virginia_
	C.	<u>N/A</u> Tribal consultation requirements – the agency requests modification of tribal consultation timelines specified in [insert name of State] Medicaid State Plan, as described below:
		Please describe the modifications to the timeline.
Section	n A – Eli <sub>ễ</sub>	gibility
1.	describ option	The agency furnishes medical assistance to the following optional groups of individuals ped in section 1902(a)(10)(A)(ii) or 1902(a)(10)(c) of the Act. This may include the new all group described at section 1902(a)(10)(A)(ii)(XXIII) and 1902(ss) of the Act providing ge for uninsured individuals.
	The Sta	name of the optional eligibility group and applicable income and resource standard.  ate elects to cover all uninsured individuals as defined under 1902(ss) of the Act  nt to Section 1902(a)(10)(A)(ii)(XXIII) of the Act effective March 18, 2020.
2.		The agency furnishes medical assistance to the following populations of individuals ped in section 1902(a)(10)(A)(ii)(XX) of the Act and 42 CFR 435.218:
	a.	All individuals who are described in section 1905(a)(10)(A)(ii)(XX)
		Income standard:
		-or-
	b.	Individuals described in the following categorical populations in section 1905(a) of the Act:
		Income standard:
3.		The agency applies less restrictive financial methodologies to individuals excepted from all methodologies based on modified adjusted gross income (MAGI) as follows.
i	Less re	strictive income methodologies:

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4.	X The agency considers individuals who are evacuated from the State, who leave the State for medical reasons related to the disaster or public health emergency, or who are otherwise absent from the State due to the disaster or public health emergency and who intend to return to the State, to continue to be residents of the State under 42 CFR 435.403(j)(3).
5.	X The agency provides Medicaid coverage to the following individuals living in the State, who are non-residents:
	Individuals caring for a family member due to illness or quarantined due to illness or otherwise unable to return home and residing in the State.
6.	The agency provides for an extension of the reasonable opportunity period for non-citizens declaring to be in a satisfactory immigration status, if the non-citizen is making a good faith effort to resolve any inconsistences or obtain any necessary documentation, or the agency is unable to complete the verification process within the 90-day reasonable opportunity period due to the disaster or public health emergency.
Section	n B – Enrollment
1.	The agency elects to allow hospitals to make presumptive eligibility determinations for the following additional State Plan populations, or for populations in an approved section 1115 demonstration, in accordance with section 1902(a)(47)(B) of the Act and 42 CFR 435.1110, provided that the agency has determined that the hospital is capable of making such determinations.
	Please describe the applicable eligibility groups/populations and any changes to reasonable limitations, performance standards or other factors.
2.	The agency designates itself as a qualified entity for purposes of making presumptive eligibility determinations described below in accordance with sections 1920, 1920A, 1920B, and 1920C of the Act and 42 CFR Part 435 Subpart L.
	Please describe any limitations related to the populations included or the number of allowable PE periods.
3.	The agency designates the following entities as qualified entities for purposes of making presumptive eligibility determinations or adds additional populations as described below in accordance with sections 1920, 1920A, 1920B, and 1920C of the Act and 42 CFR Part 435 Subpart L. Indicate if any designated entities are permitted to make presumptive eligibility determinations only for specified populations.
	Please describe the designated entities or additional populations and any limitations related to the specified populations or number of allowable PE periods.

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State/ <sup>-</sup>	Page 5 Ferritory: <u>West Virginia</u>
3.	The agency allows waiver of payment of the enrollment fee, premiums and similar charges for undue hardship.
	Please specify the standard(s) and/or criteria that the State will use to determine undue hardship.
Sectio	n D – Benefits
Benefi	ts:
1.	The agency adds the following optional benefits in its State Plan (include service descriptions, provider qualifications, and limitations on amount, duration or scope of the benefit):
2.	X The agency makes the following adjustments to benefits currently covered in the State Plan:
	The State allows physicians and other licensed practitioners, in accordance with State law, to order Medicaid Home Health services as authorized in the COVID-19 Public Health Emergency Medicare interim final rule (CMS-1744-IFC).
3.	X The agency assures that newly added benefits or adjustments to benefits comply with all applicable statutory requirements, including the statewideness requirements found at 1902(a)(1), comparability requirements found at 1902(a)(10)(B), and free choice of provider requirements found at 1902(a)(23).
4.	X Application to Alternative Benefit Plans (ABP). The State adheres to all ABP provisions in 42 CFR Part 440, Subpart C. This section only applies to states that have an approved ABP(s).
	<ul> <li>a. X The agency assures that these newly added and/or adjusted benefits will be made available to individuals receiving services under ABPs.</li> </ul>
	b Individuals receiving services under ABPs will not receive these newly added and/or adjusted benefits, or will only receive the following subset:

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Please describe.

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Telehe	alth:
5.	X The agency utilizes telehealth in the following manner, which may be different than outlined in the State's approved State Plan:
	Please describe.  FQHC and RHC Core Provider Services provided via telehealth for the duration of the federal PHE period are considered encounters. Non-core Provider services are paid as FFS at the rate in the Medicaid State Plan.
	The modification of a face-to-face encounter requirement for reimbursement for FQHCs and RHCs relative to covered services via telehealth provided by clinic providers.
Drug B	enefit:
6.	X The agency makes the following adjustments to the day supply or quantity limit for covered outpatient drugs. The agency should only make this modification if its current State Plan pages have limits on the amount of medication dispensed.
	Please describe the change in days or quantities that are allowed for the emergency period and for which drugs.  Allow early refill and up to 90 day supply of non-controlled maintenance medications.
7.	Prior authorization for medications is expanded by automatic renewal without clinical review, or time/quantity extensions.
8.	The agency makes the following payment adjustment to the professional dispensing fee when additional costs are incurred by the providers for delivery. States will need to supply documentation to justify the additional fees.
	Please describe the manner in which professional dispensing fees are adjusted.
9.	X The agency makes exceptions to their published Preferred Drug List if drug shortages occur. This would include options for covering a brand name drug product that is a multi-source drug if a generic drug option is not available.
Section	ı E – Payments
Option	al benefits described in Section D:
1.	Newly added benefits described in Section D are paid using the following methodology:
	a Published fee schedules
	Effective date (enter date of change):
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		Location (list published location):
	b.	Other:
		Describe methodology here.
2.	<u>X</u>	_ The agency increases payment rates for the following services:
	Interm Behav Psychi Ambul Dental * The i as of 3 1, 202 2020.	g home services dediate Care Facility (ICF) services doral health services datric Residential Treatment Facility (PRTF) services ance Services* Services*  Increases for ambulance and dental codes are in addition to the existing rates in effect /1/2020 and the increases that were already in process and implemented effective April D. Ambulance was increased to 90 percent of the new Medicare rates effective April 1, Dentists received a 15 percent increase effective April 1, 2020. The additional rate are effective 3/1/20 for ambulance and dental codes will end 6/30/20.
	a.	Payment increases are targeted based on the following criteria:
		Please describe criteria.
	b.	Payments are increased through:  iX_ A supplemental payment or add-on within applicable upper payment limits:
		Please describe.  Nursing Home Services are increased by \$20 per-patient-per-day for non-public facilities effective 3/1/20 through the end of the national emergency period. The \$20 per-patient-per-day increase will be used to offset COVID related costs in a separate cost settlement process. The State will allow provider lost revenue amounts – not reimbursed to the Nursing Homes through the CARES Act Provider Relief payments – to be included in the separate COVID cost settlement process to reconcile the \$20 per-patient-per-day payments.

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		ICF Services are increased by \$10 per day effective from 3/1/2020 through 6/30/20.
	ii.	X An increase to rates as described below.
		Rates are increased:
	:	X Uniformly by the following percentage: 20 percent for Behavioral Health and PRTF Services; 10 percent for Ambulance services; and 15 percent for Dental Services. These increases are effective as of 3/1/2020 through 6/30/20.
		Through a modification to published fee schedules –
		Effective date (enter date of change):
		Location (list published location):
		Up to the Medicare payments for equivalent services.
		By the following factors:
		Please describe.
Payment for servic	es del	ivered via telehealth:
3. X For that:	the du	uration of the emergency, the State authorizes payments for telehealth services
a. <u>X</u>	Ar	e not otherwise paid under the Medicaid State Plan;
b	Dif	fer from payments for the same services when provided face to face;
	Dif leheal	ffer from current State Plan provisions governing reimbursement for th;
(E.		telehealth payment variation.  Ilow for reimbursement for telephone visits at the same rate as telehealth sits.
fo tri	r teled age de	ffective April 1, 2020, all dental providers will be reimbursed at the FFS rate dentistry screening (D9995). This service will be provided to help identify and ental emergency services during the pandemic. Published fee schedules: dhhr.wv.gov/bms/fees/Pages/default.aspx

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4. X Other payment changes:

Please describe.

#### **Payment for additional Bed-hold Days:**

Reimbursement for greater than six therapeutic, non-medical bed hold days per year will be permitted to allow nursing home settings to retain settings when members have the option to stay with their families during the pandemic period. The 6 day bed-hold limit is currently in the State Plan in Attachment 4.19 -D-1, VII. The 6-day bed-hold limit can be exceeded with prior authorization.

BMS also requests the modification of State Plan Attachment 4.19-D, which establishes the provision for reimbursement of Intermediate Care Facilities. Members using ICF services often participate in day programs, which reduces the need for staffing in facilities while clients are in these programs. ICF rates account for this reduced staff time. ICF day programs are being suspended to prevent the spread of COVID-19, resulting in clients needing to stay within their facilities and increasing the cost for facilities to have adequate staff. The assumed participation time in the day programs are not built into ICF rates. The State seeks to modify the current ICF rate-setting methodology to provide an add-on to facility rates to compensate for the increased cost of staff time not accounted for in the current facility's daily rates during the duration of the emergency.

Long-term Acute Care Hospital Services not reimbursed under the state plan:

A Medicaid Per Diem Cost amount will be calculated (including routine and ancillary costs) from Worksheets D1 and S3 from the Medicare Cost Report.

The Medicare Per Diem cost will be adjusted for a cost coverage percentage (81.58 percent) = Adjusted Per Diem.

Medicaid will reimburse providers the Adjusted Per Diem.

### **Days Awaiting Placement:**

Inappropriate level of care days in inpatient hospitals (also called days awaiting placement) for members will be reimbursed at a rate of \$238 per day when the member cannot be discharged to home or to another care setting, including but not limited to nursing home settings, due to a need for isolation or continued medical care; the rate reflects the level of

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Section F - Post-Eligibility Treatment of Income

care received and is lower than other inpatient hospital services in a manner consistent with
1861(v)(1)(G) of the Social Security Act.

1	
1.	The State elects to modify the basic personal needs allowance for institutionalized individuals. The basic personal needs allowance is equal to one of the following amounts:
	a The individual's total income
	b 300 percent of the SSI federal benefit rate
	c Other reasonable amount:
2.	The State elects a new variance to the basic personal needs allowance. (Note: Election of this option is not dependent on a State electing the option described the option in F.1. above.)
	The State protects amounts exceeding the basic personal needs allowance for individuals who have the following greater personal needs:
	Please describe the group or groups of individuals with greater needs and the amount(s) protected for each group or groups.
Section Inform	n G – Other Policies and Procedures Differing from Approved Medicaid State Plan /Additional nation

## **PRA Disclosure Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1148 (Expires 03/31/2021). The time required to complete this

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information collection is estimated to average 1 to 2 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. Your response is required to receive a waiver under Section 1135 of the Social Security Act. All responses are public and will be made available on the CMS web site. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850. \*\*\*CMS Disclosure\*\*\* Please do not send applications, claims, payments, medical records or any documents containing sensitive information to the PRA Reports Clearance Office. Please note that any correspondence not pertaining to the information collection burden approved under the associated OMB control number listed on this form will not be reviewed, forwarded, or retained. If you have questions or concerns regarding where to submit your documents, please contact the Centers for Medicaid & CHIP Services at 410-786-3870.

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