



COVID-19 and Changes of Ownership

Hedy S. Rubinger and Alexander B. Foster

The President's national emergency declaration on March 13, 2020, made issued in response to COVID-19, enabled the Centers for Medicare and Medicaid Services (CMS) to grant state Medicaid agencies added flexibility through a waiver request process. CMS also has broader waiver abilities for Medicare and CHIP. This change has the potential to have a significant impact on prospective or pending changes of ownership (CHOWs). This article focuses on CMS' recent granting of a Florida waiver, but providers could expect to see additional waivers in the coming weeks. AGG is devoting significant resources and attention to staying abreast of COVID-19 responses at the federal and state level. For any providers with concerns about licensure, Medicare, Medicaid, or other regulatory COVID-19 related issues, AGG is available to provide guidance and assistance in overcoming the unique regulatory issues posed by the novel virus.

Following the President's emergency declaration, Florida quickly submitted what is referred to as a "Section 1135" waiver request.¹ CMS, in recognition of the need for a speedy response, approved the request within days. The approved request includes pieces relevant to CHOWs.² For example, CMS approved the following provider enrollment measures:

- If a certified provider is enrolled in Medicare or with a state Medicaid program other than Florida, Florida may perform an expedited enrollment, as described above, of an out-of-state facility in order to accommodate participants who were displaced by the emergency.
- With respect to providers not already enrolled with another state Medicaid program or Medicare, CMS will waive the following screening requirements so the state may provisionally, temporarily, enroll the providers:
 - Payment of the application fee;
 - Criminal background checks associated with Fingerprint-based Criminal Background Checks;
 - Site visits; and
 - In-state/territory licensure requirements.
- CMS granted this waiver authority to enroll providers who are not currently enrolled with another state Medicaid program or Medicare so long Florida, meets the following minimum requirements:
 - Must collect minimum data requirements in order to file and process claims, including, but not limited to a National Provider Identifier (NPI).
 - Must collect Social Security Number, Employer Identification Number, and Taxpayer Identification Number (SSN/EIN/TIN) in order to perform the following screening requirements:
 - OIG exclusion list.
 - State licensure – provider must be licensed, and legally authorized, in any state/territory to practice or deliver the services for which they intend to file claims.
 - Florida must also:
 - Issue no new temporary provisional enrollments after the date that the emergency designation is lifted.

¹ For more information on Section 1135 waivers, see <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/1135-Waivers>.

² CMS' approval letter is available at <https://www.medicaid.gov/state-resource-center/downloads/fl-section-1135-appvl.pdf>.

- Cease payment to providers who are temporarily enrolled within six months from the date that the emergency designation is lifted, unless a provider has submitted an application that meets all requirements for Medicaid participation and that application was subsequently reviewed and approved by Florida.
- Allow a retroactive effective date for provisional temporary enrollments that is no earlier than March 1, 2020.
- Florida has also been authorized to cease revalidation of providers who are located in Florida or are otherwise directly impacted by the emergency, easing administrative requirements on currently enrolled providers.

These waivers represent an unprecedented step by CMS and state Medicaid programs to ease provider enrollment processes in response to an unprecedented disease. Providers who are currently enrolled, pending enrollment, or plan to submit an application for enrollment soon will be affected by these developments at the federal and state level and it is important to remain up-to-date with such developments.

Authors and Contributors

Hedy S. Rubinger

Partner, Atlanta Office
404.873.8724
hedy.rubinger@agg.com

Alexander B. Foster

Associate, Atlanta Office
404.873.8598
alexander.foster@agg.com

not *if*, but *how*.[®]

About Arnall Golden Gregory LLP

Arnall Golden Gregory (AGG) is an Am Law 200 law firm with offices in **Atlanta** and **Washington, DC**. Our client-service model is rooted in taking a “business sensibility” approach of fully understanding how our clients’ legal matters fit into their overall business objectives. We provide industry knowledge, attention to detail, transparency and value to help businesses and individuals achieve their definition of success. Our transaction, litigation and regulatory counselors serve clients in healthcare, real estate, litigation and other dispute resolution, business transactions, fintech, global commerce, government investigations and logistics and transportation. With our rich experience and know-how, we don’t ask “if,” we figure out “how.” Visit us at www.agg.com.

Atlanta Office

171 17th Street, NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office

1775 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: <http://www.agg.com/subscribe/>

©2020. Arnall Golden Gregory LLP. This client alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice. Under professional rules, this communication may be considered advertising material.