

Requesting an 1135 Waiver*

Definition of an 1135 Waiver

When the President declares a disaster or emergency under the Stafford Act or National Emergencies Act and the HHS Secretary declares a public health emergency under Section 319 of the Public Health Service Act, the Secretary is authorized to take certain actions in addition to her regular authorities. For example, under section 1135 of the Social Security Act, she may temporarily waive or modify certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in Social Security Act programs in the emergency area and time periods and that providers who provide such services in good faith can be reimbursed and exempted from sanctions (absent any determination of fraud or abuse).

Examples of these 1135 waivers or modifications include:

- Conditions of participation or other certification requirements
- Program participation and similar requirements
- Preapproval requirements
- Requirements 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 (this waiver is for purposes of Medicare, Medicaid, and CHIP reimbursement only – state law governs whether a non-Federal provider is authorized to provide services in the state without state licensure)
- Emergency Medical Treatment and Labor Act (EMTALA) sanctions for direction or relocation of an individual to receive a medical screening examination in an alternative location pursuant to an appropriate state emergency preparedness plan (or in the case of a public health emergency involving pandemic infectious disease, a state pandemic preparedness plan) or transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the declared emergency. A waiver of EMTALA requirements is effective only if actions under the waiver do not discriminate on the basis of a patient's source of payment or ability to pay.
- Stark self-referral sanctions
- Performance deadlines and timetables may be adjusted (but not waived).
- Limitations on payment for health care items and services furnished to Medicare Advantage enrollees by non-network providers
- Advanced and Accelerated Payment (Medicare Division of Financial Management)

These waivers under section 1135 of the Social Security Act typically end no later than the termination of the emergency period, or 60 days from the date the waiver or modification is first published unless the Secretary of HHS extends the waiver by notice for additional periods of up to 60 days, up to the end of the emergency period. Waivers for EMTALA (for public health emergencies that do not involve a pandemic disease) and HIPAA requirements are limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. Waiver of EMTALA requirements for emergencies that involve a pandemic disease last until the

termination of the pandemic-related public health emergency. The 1135 waiver authority applies only to Federal requirements and does not apply to State requirements for licensure or conditions of participation.

Other Flexibilities

In addition to the 1135 waiver authority, Section 1812(f) of the Social Security Act (the Act) authorizes the Secretary to provide for skilled nursing facility (SNF) coverage in the absence of a qualifying hospital stay, as long as this action does not increase overall program payments and does not alter the SNF benefit's "acute care nature" (that is, its orientation toward relatively short-term and intensive care).

Determining if 1135 Waiver Authority Is Necessary

In determining whether to invoke an 1135 waiver (once the conditions precedent to the authority's exercise have been met), the Assistant Secretary for Preparedness and Response (ASPR) with input from relevant OPDIVS determine the need and scope for such modifications. Information considered includes requests from Governor's offices, feedback from individual healthcare providers and associations, and requests to regional or field offices for assistance.

How States or Individual Healthcare Providers Can Ask for Assistance or a Waiver

Once an 1135 Waiver is authorized, health care providers can submit requests to operate under that authority or for other relief that may be possible outside the existing authority to the State Survey Agency with a copy to the CMS Regional Office. Email addresses for the CMS Regional Office in their service area are listed below. Information on your facility and justification for requesting the waiver will be needed. The waiver process may also be initiated through telephone contacts and fax. There is not standard format for waiver submittal.

Review of 1135 Waiver requests

The WDSC Associate Regional Administrator with the WDSC Coordination staff, the CQISCO Administrator's Deputy, and applicable State Agency will be involved in reviewing the 1135 waiver requests to ensure they are justified and supportable. Anticipatory waivers cannot be granted. Note: At no time should patient safety be comprised while awaiting the processing of an 1135 waiver.

Implementation of 1135 Waiver Authority

Providers must resume compliance with normal rules and regulations as soon as they are able to do so, and in any event the waivers or modifications a provider was operating under are no longer available after the termination of the emergency period. Federally certified/approved providers must operate under normal rules and regulations, unless they have sought and have been granted modifications under the waiver authority from specific requirements.

Frequently Asked Questions

Further information on the 1135 Waiver process can be found at:

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/1135-Waivers.html>

CMS Survey & Certification Emergency Preparedness Website

<https://www.cms.gov/SurveyCertEmergPrep/>

Email Addresses for CMS Regional Offices

ROATLHSQ@cms.hhs.gov (Atlanta RO): Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

RODALDSC@cms.hhs.gov (Dallas RO): Arkansas, Louisiana, New Mexico, Oklahoma, Texas

ROPHIDSC@cms.hhs.gov (Northeast Consortium): Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia, New York, New Jersey, Puerto Rico, Virgin Islands, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

ROCHISC@cms.hhs.gov (Midwest Consortium): Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Iowa, Kansas, Missouri, Nebraska

ROSFOSO@cms.hhs.gov (Western Consortium): Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, Alaska, Idaho, Oregon, Washington, Arizona, California, Hawaii, Nevada, Outer Pacific

9/15/16 Final Rule on Emergency Preparedness Resources:

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Emergency-Prep-Rule.html>

Questions re: Emergency Preparedness Rule

Please contact SCGEmergencyPrep@cms.hhs.gov

TRACIE

The Assistant Secretary for Preparedness and Response (ASPR's) Technical Resources Assistance Center and Information Exchange (TRACIE) can be found at:

<https://www.asprtracie.hhs.gov>

Medicare Learning Network (MLN) Training (October 5, 2016)

<https://www.cms.gov/Outreach-and-Education/Outreach/NPC/National-Provider-Calls-and-Events-Items/2016-10-05-Emergency-Preparedness.html?DLPage=2&DLEntries=10&DLSort=0&DLSortDir=descending>