

ASPR TRACIE Technical Assistance Request

Request Receipt Date (by ASPR TRACIE): 23 March 2020

Response Date: 24 March 2020

Type of TA Request: Standard

Request:

ASPR TRACIE received a request for information on overall Centers for Medicare & Medicaid (CMS) waivers and declarations for COVID-19.

Response:

The [CMS Coronavirus Waivers and Flexibilities](#) page provides comprehensive information about all CMS actions during COVID-19 response. This document, [COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers](#), describes the specific blanket waivers issued. CMS is updating the blanket waivers continuously. The [CMS Policy and Memos to States and Regions](#) page provides additional guidance developed by the CMS Quality Safety and Oversight Group, which includes clarifications and instructions to State Survey Agencies and CMS Regional Locations. Once on the page, sort by Posting Date to see the most recent memos related to COVID-19. CMS [provides email updates](#) that include press releases and other information from their email updates page.

When the President declares a disaster or emergency under the Stafford Act or National Emergencies Act AND the U.S. Department of Health and Human Services (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 regular authorities. For example, under section 1135 of the Social Security Act (SSA), he 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 SSA 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 redirection of an individual to receive a medical screening examination in an alternative location pursuant to a 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 to permit Medicare enrollees to use out of network providers in an emergency situation

These waivers under section 1135 of the SSA 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 Health Insurance Portability and Accountability Act (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.

There are different kinds of 1135 waivers, including Medicare blanket waivers. When there is an emergency, sections 1135 or 1812(f) of the SSA allow us to issue blanket waivers to help beneficiaries access care. When a blanket waiver is issued, providers do not have to apply for an individual 1135 waiver. When there is an emergency, we can also offer health care providers other flexibilities to make sure Americans continue to have access to the health care they need.

For the COVID-19 response, both the President and the Secretary have made their respective declarations and the Secretary has issued blanket waivers that do not require States to individually apply for relief. The waivers can be found on the [CMS Coronavirus Waivers and Flexibilities](#) page. These [COVID-19 blanket waivers](#) are in effect, with a retroactive effective date of March 1, 2020 through the end of the emergency declaration. These waivers DO NOT require a request to be sent to the 1135waiver@cms.hhs.gov mailbox or that notification be made to any of CMS's regional locations.

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 Facilities (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). Federally certified/approved providers must continue to operate under normal rules and regulations, unless they have sought and have been granted modifications under the waiver authority from specific requirements.

In addition, the Coronavirus Preparedness and Response Supplemental Appropriations Act, as signed into law by the President on March 6, 2020, includes a provision allowing the Secretary to waive certain Medicare telehealth payment requirements during the PHE the Secretary declared on January 31, 2020 to allow beneficiaries in all areas of the country to receive telehealth services, including at their home. Under the waiver, limitations on where Medicare patients are eligible for telehealth will be removed during the emergency. In particular, patients outside of rural areas, and patients in their homes will be eligible for telehealth services, effective for services starting March 6, 2020.

Finally, if you review the CMS Blanket Waivers issued and you have additional questions, or would like to submit a waiver for consideration, please email 1135waiver@cms.hhs.gov. There is also a document labeled “[Requesting an 1135 Waiver 101 \(PDF\)](#)” which may assist you in this process.