CORONAVIRUS DISEASE 2019
(COVID-19)

1135 Emergency Waiver Frequently Asked Questions

Trinity Health

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NOTE: On March 13, 2020 the President declared COVID-19 to be a national emergency. As a result, CMS has been authorized to take proactive steps through the 1135 Emergency Waiver process. The goal of the 1135 Waiver is to remove regulatory barriers where feasible in order to ensure that healthcare providers who deliver services in good faith can be fairly reimbursed and not subjected to sanctions for noncompliance when the normal course of action cannot be followed. CMS issued a "blanket" waiver for certain accommodations has been issued in support of healthcare providers to combat and contain the spread of this virus. The summary of those waivers is located in the "Update on the 1135 Waiver for Leadership" in the Regulatory folder on the PULSE page dedicated to CVOID 19.

What Is An 1135 Emergency Waiver?
Participation as Medicare/Medicaid/SCHIP certified providers is based on our ability to demonstrate that we are able to furnish services in a manner that protects the health and safety of beneficiaries according to the specific regulations for each provider type.

The purpose of the COVID-19 Emergency Declaration (1135 Emergency Waiver) is to ensure that:

(1) Sufficient health care items and services are available to meet the needs of Medicare/Medicaid/SCHIP beneficiaries, and;
(2) Health care providers that furnish such items and services in good faith but are unable to comply with certain requirements may still be reimbursed for such items or services and exempted from sanction (absent fraud or abuse) and do not face unnecessary obstacles to their ability to respond.

The waiver allows for reimbursement during the emergency even if providers can't comply with certain requirements that would, under normal circumstances, bar them from receiving reimbursement.

At the declaration of a national COVID-19 public health emergency, the Secretary of HHS invoked the 1135 Waiver authority. CMS then took steps to identify the specific requirements that may be waived or modified under the "blanket" 1135 emergency authority, as well as to whom and under what circumstances the waiver or modifications apply.

(see https://www.cms.gov/files/document/covid19-emergency-declaration-health-care-providers-fact-sheet.pdf for emergency modifications by provider type)

Does the current 1135 Emergency Waiver apply to everyone?

The waivers and modifications normally apply only to providers located in the declared "emergency area" (as defined in section 1135(g)(1) of the SSA) in which the Secretary has declared a public health emergency, and only to the extent that the provider in question has been affected by the disaster (or is treating evacuees). In this case, the waiver *applies to the entire United States*.

Does the 1135 Emergency Waiver mean EMTALA does not apply?

No. EMTALA is still in effect. Hospitals are permitted to set up alternative screening sites outside of the 4 walls of the hospital, **but** otherwise all the rules of EMTALA, including the requirement for a medical screening exam by qualified medical personnel and stabilization, are still applicable. (CMS Memorandum *Emergency Medical Treatment and Active Labor (EMTALA) Requirements and Implications Related to Coronavirus Disease 2019 (COVID-19)* posted separately on PULSE)

We have screening sites set-up off our main campus, if a patient comes to the emergency department and wants to be screened for COVID 19, can we redirect the patient to the off-campus screening location?

No. The patient has "presented to the emergency department" therefore the patient must receive a medical screening exam. If the emergency department has a separate screening location for anyone who is presenting to the emergency department for COVID19 type symptoms or testing, the patient may be moved/transported by hospital personnel to that location for the medical screening exam after logging the patient in. (See CMS Memorandum *Emergency Medical Treatment and Active Labor (EMTALA) Requirements and Implications Related to Coronavirus Disease 2019 (COVID-19)* posted separately on PULSE.)

Is the 1135 Emergency Waiver applicable for a certain timeframe?

Yes. A waiver of sanction ends in several ways:

1. 60 days after date the waiver was published;
2. Under the Emergency Medical Treatment and Labor Act (EMTALA) in the emergency area, a waiver would *normally* end 72 hours after implementation of the hospital's disaster plan; however, because the current public health emergency involves a pandemic infectious disease, the waiver of sanctions under EMTALA may be extended until the termination of the declaration of the public health emergency;
3. ***In general, a waiver or modification of a Medicare/Medicaid requirement invoked by the Secretary as a result of a public health emergency, will end upon the termination of the Secretary's declaration of the public health emergency pursuant to Section 319 of the Public Health Service Act.***

In addition, a waiver or modification granted under the 1135 authority may terminate prior to the end of the Secretary's declaration of a public health emergency, if the waiver or modification is no longer necessary to accomplish the purposes set forth in Section 1135(a). (e.g., If a hospital regains its ability to comply with a waived requirement before the end of the declared emergency period, the waiver of that requirement would no longer apply to that hospital.)

When should the "blanket" 1135 Emergency Waiver which eliminates the three-day waiting period for skilled nursing facility admission be enacted?

When the acute care facility has reached maximum capacity (85% of staffed beds are occupied) the patient may be transferred to the skilled care facility without the three-day waiting period (sanction is waived) as long as they have a skilled need. Documentation in the patient record should reflect the rationale for the transfer. If maximum capacity is not at 85%, patients should be maintained in acute care for the three-day waiting period unless the patient is aligned to your ACO in which case contact your ACO/CIN care management team who can assist and be sure those rules are followed. Remember that the safest place for these patients are at their home so they can practice self-isolation but if they cannot possibly make it home, as long as they are medically stable the plan can be to transfer early. Your CIN teams have been using waivers for over 2 years so they are a great resource if you need help.

What if there are other service modifications not covered in the "1135 "Blanket" Emergency Waiver" that must be requested?

Emergency waiver requests not covered by the current 1135 Emergency Waiver document must be submitted to CMS for approval. The CMS Regional Office(s) will review all provider requests for service modifications and make decisions on a case-by-case basis. CMS will determine if it agrees that the requested waiver is necessary.

How should a request for emergency service modification be submitted?

There is no specific form or format that is required to submit the request for a specific Section 1135 waiver, but the document should clearly state the scope of the issue and the impact. For requests not covered by CMS Emergency 1135 Waiver, The CMS Regional Office(s) will review the provider's request for service modifications and make decisions on a case-by-case basis. Providers outside of the affected areas should operate under standard regulations unless specifically notified otherwise.

States and territories may submit a Section 1135 waiver request to their CMS regional office.

Note: See your Ministry counsel for assistance in drafting your request; copies of all requests should be forwarded to:

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For more information:
https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/All-Hazards-FAQs.pdf