

## **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. 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).

### **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 Waivers Are 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 will be asked to submit requests to operate under that authority to the State Survey Agency or CMS Regional Office by sending an email with the following information to the CMS Regional Office in their service area. Emails are listed below.

1. Facility name, Type, CCN, City, State
2. Specific requirement requested for waiver
3. Justification for waiver
4. Expected duration of need

### **Review of 1135 Waiver requests**

CMS will review and validate the 1135 waiver requests utilizing a cross-regional Waiver Validation Team. The cross-regional Waiver Validation Team will review waiver requests to ensure they are justified and supportable.

### **Implementation of 1135 Waiver Authority**

Providers must resume compliance with normal rules and regulations as soon as they are able to do so, but not later than the termination of the emergency period.