

# CMS Waivers and COVID-19 Response

April 2020  
Kimberly Brandt, CMS



# COVID-19 Response

- CMS is empowered to take proactive steps through 1135 waivers
- In constant contact with state health officials and health care providers and partners to understand new needs
- Working to make sure every stakeholder in the system is fully informed

# What is an 1135 Waiver?

1135 Waivers allow HHS to waive various administrative requirements to increase access to medical services during a time of national emergency.

The waivers ensure that sufficient health care items and services are available to meet the needs of Medicare, Medicaid and CHIP beneficiaries, and that health care providers that provide such services in good faith can be reimbursed for them and not be subjected to sanctions for noncompliance, absent any fraud or abuse.

# When can 1135 Waivers be issued?

There are two requirements that must be met for 1135 Waivers to be issued:

Presidential declaration of disaster or emergency under the Stafford Act or National Emergencies Act

+

HHS Secretary declares a public health emergency under Section 319 of the Public Health Service Act

**Both of these requirements have been met as of March 13, 2020.**

# Scope of 1135 Waivers

Scope	Federal requirements only; not state licensure or conditions of participation.
Purpose	Allows reimbursement during an emergency or disaster even if providers can't comply with certain requirements that would under normal circumstances prohibit Medicare, Medicaid or CHIP payment
Duration	Begins as of the effective date of the declared emergency. In this instance, they are retroactively effective as of <b>March 1, 2020</b> . Ends no later than the termination of the emergency period, or 60 days from the date the waiver or modification is published, unless the HHS Secretary extends the waiver by notice for additional periods of up to 60 days.

# What don't 1135 Waivers do?

- 1135 Waivers are not a grant or financial assistance program
- Do not allow reimbursement for services otherwise not covered
- Do not allow individuals to be eligible for Medicare who otherwise would not be eligible
- Should NOT impact any response decisions, such as evacuations
- Do not last forever. And appropriateness may fade as time goes on.

# Two types of 1135 Waivers

## Medicare Blanket Waivers

CMS implements specific waivers or modifications on a “blanket” basis when a determination has been made that all similarly situated providers in the emergency area need such a waiver or modification.

**Once approved, these waivers apply automatically to all applicable providers and suppliers. Providers and suppliers do not need to apply for an individual waiver if a blanket waiver is issued by CMS.**

## Provider/Supplier Individual Waivers

Individual waivers can be issued for states, providers or suppliers. **These only need to be applied for if something is needed beyond what is provided under an existing blanket waiver.**

**Two new areas in this emergency are:**

1. COVID-19 facility setup, such as transfer from SNF, HH, etc. to another location (e.g. a hotel used as a temporary treatment facility)
2. Medical evaluation at drive-thru testing locations

# Already Issued Blanket Waivers

- Waivers and Flexibilities for Hospitals and other Healthcare Facilities
  - Skilled Nursing Facilities (SNFs)
  - Critical Access Hospitals
  - Acute Care Hospitals
  - Inpatient Psychiatric Services
  - Inpatient Rehabilitation Services
  - Long-Term Care Acute Hospitals
  - Home Health Agencies
  - Hospice
- Provider Licensing and Enrollment
- Suspension of Enforcement Activities
- Telehealth
- Signature Requirements
- Financial Relief for Medicare Providers

Details for these waivers can be found in the Appendix of this presentation, or online [here](#).

**The effective date for all blanket waivers will retroactively be applied as of March 1, 2020.**

# Flexibility and Relief for State Medicaid Agencies

States and territories may seek 1135 waiver relief and flexibilities for Medicaid program requirements, including:

- Prior authorization in fee-for-service programs
- Allowing providers located out of state/territory to provide care to another state's Medicaid enrollees impacted by the emergency
- Temporarily suspending certain provider enrollment and revalidation requirements to increase access to care

**CMS has created a dedicated Medicaid.gov COVID-19 resource page which will be continually updated with relevant information, and contains further [1135 guidance through the Medicaid Disaster Response Toolkit](#).**

As of March 27, CMS approved *34 state waivers* under Section 1135, and eight state requests to invoke emergency flexibilities in their programs.

# Special Waivers

## Emergency Medical Treatment and Active Labor Act (EMTALA)

**Only two are available under the statute:**

1. Transfer of an individual who has not been stabilized, if the transfer arises out of an emergency
2. Redirection to another location to receive a medical screening exam under a state emergency preparedness or pandemic plan.

**For the duration of the COVID-19 emergency, CMS is waiving the enforcement of section 1867(a) of the Social Security Act (or EMTALA) to allow for screening at a location offsite from the hospital's campus.**

## Physician Self-Referral (Stark) Law

All requests for waiver of sanctions under the physician self-referral law related to COVID-19 should be sent to [1877CallCenter@cms.hhs.gov](mailto:1877CallCenter@cms.hhs.gov) and include the words "Request for 1877(g) Waiver" in the subject line. All requests should include the following minimum information:

- Name and address of requesting entity
- Name, phone number and email address of person designated to represent the entity
- CMS Certification Number (CCN) or Taxpayer Identification Number (TIN)
- Nature of request

# Is your need covered by a Blanket Waiver?

You **DO NOT** have to make a request for an accommodation covered by a blanket waiver that has already been issued.

Additionally, you **DO NOT** have to notify CMS if you are taking action in accordance with a waiver during the valid waiver time period.

# Who needs 1135 Waivers?

Any entity including a state, an association, management company or individual provider for whom federal Medicaid, Medicare and CHIP requirements are posing issues or challenges for health care delivery can apply for a specific waiver for accommodation.

If CMS regulations are impeding your ability to respond to or recover from a disaster or emergency, you may need a waiver.

# Waiver Authority and Review Process

## Authority Considerations

- Scope and severity of event with specific focus on health care infrastructure
- Are there unmet needs for health care providers?
- Can these unmet needs be resolved within our current regulatory authority?

## Waiver Review Process

- Is it within the defined Emergency Area?
- Is there an actual need?
- Can this be resolved within current regulations?
- What is the expected duration?
- Will the regulatory relief requested actually address the stated need?
- Should we consider individual or blanket waivers?

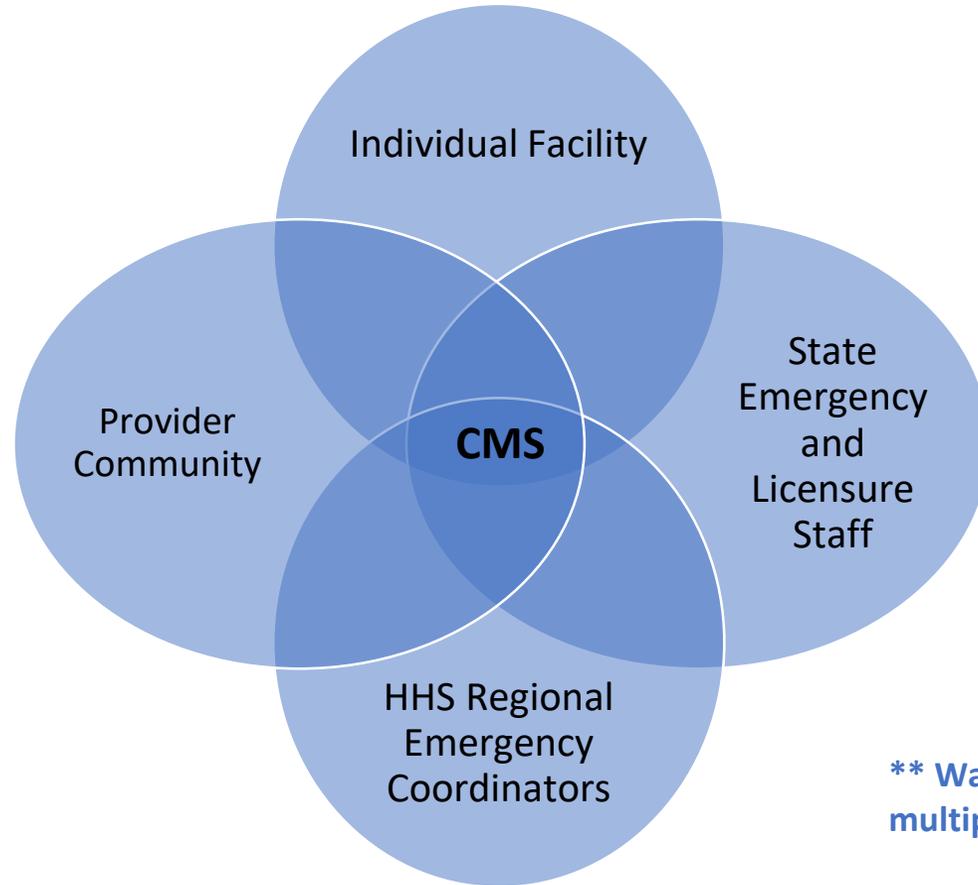
# How to Request an 1135 Waiver

If you have a need for relief that is not covered under an already issued blanket waiver, you can submit a request by providing the following information:

- Full name
- Phone number
- Email address
- State/territory which is applying
- 1135 Flexibilities you are requesting

**Please send your requests to:**  
[1135waiver@cms.hhs.gov](mailto:1135waiver@cms.hhs.gov)

# Waiver Review Inputs



**\*\* Waiver requests can be combined across multiple groups.**

# Waiver Request Status

CMS is currently reviewing the requests received from all healthcare providers. CMS will determine if frequent requests by specific providers or suppliers may be appropriate for a blanket waiver.

We recommend all healthcare entities to monitor waivers approved, including blanket waivers available at: <https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page>

# Expectations of Waived Providers

## Request

Provide sufficient information to justify actual need.

## Waived

Providers and suppliers will be required to keep careful records of beneficiaries to whom they provide services, in order to ensure that proper payment may be made.

## Normal Ops

Providers must resume compliance with normal rules and regulations as soon as they are able to do so.

# Thank You!

For questions, please email: [1135waiver@cms.hhs.gov](mailto:1135waiver@cms.hhs.gov)

# Appendix

# Contact Information

For questions, please email: [1135waiver@cms.hhs.gov](mailto:1135waiver@cms.hhs.gov)

You can also reach out to your CMS Regional Office. Addresses for each of those are on the following slide.

If you have further billing or coverage concerns, contact the Medicare Administrative Contractor (MAC)

# Submitting claims under Blanket Waivers

Apply the following to claims covered by the blanket waivers:

1. The “DR” (disaster related) condition code for institutional billing, i.e., claims submitted using the ASC X12 837 institutional claims format or paper Form CMS-1450
2. The “CR” (catastrophe/disaster related) modifier for Part B billing, both institutional and non-institutional, i.e., claims submitted using the ASC X12 837 professional claim format or paper Form CMS-1500 or, for pharmacies, in the NCPDP format

This requirement does not apply for purposes of compliance with blanket or individual waivers of sanctions under the physician self-referral law.