The Basics of Working with 1135 Waivers

You’ve probably heard the phrase, “desperate times call for desperate measures.” Or, as the Greek physician Hippocrates said it, “For extreme diseases, extreme methods of cure, as to restriction, are most suitable.”

The COVID-19 pandemic has forced healthcare providers to come up with creative, yet effective, ways to treat patients. Many of these innovations fall outside standard operating procedures—so it’s important to make sure your emergency policies and practices are covered by the appropriate 1135 waiver.

What Are 1135 Waivers?

In special circumstances, such as the current COVID-19 health crisis, the United States Department of Health and Human Services (HHS) Secretary authorizes the Center for Medicare & Medicaid Services (CMS) to issue waivers allowing healthcare providers to temporarily disregard or modify certain Medicare, Medicaid, and CHIP regulations to make sure health care services are available to the people who need them. These waivers allow providers to be reimbursed as needed and protects them from the typical regulatory sanctions and penalties.

Current 1135 blanket waivers for COVID-19 can be found here:  

Information and fact sheets for Coronavirus can be found here:  

What Kinds of Emergency Waivers Are There?

There are 3 different types of waivers that can be issued by CMS:

**Blanket federal waivers:**
These are the 1135 waivers at the federal level that cover the programs listed above, along with certain regulations for HIPAA, Stark, and EMTALA. These waivers cover all healthcare facilities in an area affected by a declared emergency.

   Waivers related to Stark can be found here:  

**State-specific waivers:**
These are situations where a state or state hospital association has requested additional special circumstances waivers for all the hospitals in that state.

   State-specific waiver information can be found here:  

**Individual provider/facility waivers:**
These are cases where an individual facility, provider, or provider group needed additional flexibilities that were not already provided by the blanket or state-specific waivers.
How Long Do Waivers Last?

Waivers authorized for COVID-19 last for the duration of the declared emergency. They typically last for 60 days after notice is given, unless that time is extended by the HHS Secretary. HIPAA/EMTALA waivers are only supposed to last 72 hours, but since this is a special circumstance, they will last for the duration of the pandemic.

Which Emergency Policies and Procedures Require Waivers and Which Do Not?

CMS put together FAQ documents to walk healthcare providers through the types of emergency policies and procedures that can be put into place without the need for an 1135 waiver, as well as situations that would require a waiver. Follow the links below to review them for your facility or practice.

**Waiver needed:**

**Waiver unnecessary:**

How do You Apply for an 1135 Waiver?

If you have a policy or practice that is not covered by a federal, state, or local waiver that’s already in place, you’ll need to request a waiver from your CMS regional office. There is no specific form you’ll need to follow, but be sure you include all of the following information:

- The facility name and mailing address, including the country
- Your CMS certification number (CCN number)
- A contact person and their complete contact information
- An explanation of why you need the waiver, which has to include the complete scope of the issue and how it affects your facility
- The specific type of regulatory relief you’re requesting, or the specific regulations and references you’re asking CMS to waive

According to the CMS website, responses to waiver requests typically take 2 to 3 business days, but given the current situation it could take weeks. It’s also important to keep in mind that waivers are typically retroactively dated to the start of an emergency.

**For more information on making a request, including email addresses for regional CMS offices, follow this link:**

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