

Federal 1135 Waiver Frequently Asked Questions COVID-19 Outbreak

March 25, 2020

NHPCO would like to hear from you regarding your organization's plans to submit a 1135 waiver request. Please email us at covid19@nhpco.org.

1. When can my organization submit a request for a 1135 waiver?

Today. When the President declared a disaster or emergency under the National Emergencies Act and the HHS Secretary declared a public health emergency under Section 319 of the Public Health Service Act, the Secretary of the U.S. Health and Human Services (HHS) was authorized to take certain actions in addition to his regular authorities.

2. How can a 1135 waiver help me?

An 1135 waiver may temporarily waive or modify or provide flexibility of 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).

3. What are examples of Medicare requirement that could be waived/modified for hospice and palliative care providers?

- 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)
- Performance deadlines and timetables may be adjusted, but not waived (i.e. Hospice Item Set submission).
- HIPAA

4. What hospice services would not be covered under an 1135 waiver?

Waivers do not provide flexibility for coverage related regulatory requirements (i.e. hospice face-to-face visit (which requires a statutory fix) or respite care more than 5 consecutive days). See #9 for recommended list.

5. When would an 1135 waiver under today's (coronavirus) national emergency end?

Waivers 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.

6. Can an 1135 waiver be issued retroactively?

A specific waiver or modification granted as a result of the emergency may be retroactive to the beginning of the emergency or disaster if warranted.

7. What is an 1135 blanket waiver?

CMS may implement specific waivers or modifications under the 1135 authority on a "blanket" basis, when a determination has been made that all similarly situated providers in the emergency area needed such a waiver or modification.

- The decision to implement a "blanket" waiver or modification of a specific Medicare, Medicaid or CHIP requirement is based on the need and frequency of requests for specific waivers or modifications in response to the disaster or emergency.
- While blanket authority for these modifications may be allowed, the provider should still notify the State Survey Agency and CMS Regional Office if operating under these modifications to ensure proper payment.

8. How do I request an 1135 waiver from CMS?

You can email and/or mail your request to your CMS Regional Office. The requests must include a justification for the waiver and expected duration of the modification. You should also email your request to 1135waiver@cms.hhs.gov.

Once an 1135 Waiver is authorized, health care providers can submit requests to operate under that authority or for other relief that may be possible outside the authority to the CMS Regional Office with a copy to the State Survey Agency.

9. What should the 1135 waiver request include?

- Provider Name/Type
- Full Address (including county/city/town/state) CCN (Medicare provider number)
- Contact person and his or her contact information for follow-up questions should the Region need additional clarification.
- Brief summary of why the waiver is needed. For example: CAH is sole community provider without reasonable transfer options at this point during the specified emergent event (e.g. flooding, tornado, fires, or flu outbreak). CAH needs a waiver to exceed its bed limit by X number of beds for Y days/weeks (be specific).
- Consideration – Type of relief you are seeking or regulatory requirements or regulatory reference that the requestor is seeking to be waived.
- There is no specific form or format that is required to submit the information, but it is helpful to clearly state the scope of the issue and the impact.

If a waiver is requested, the information should come directly from the impacted provider to the appropriate Regional Office mailbox with a copy to the appropriate State Agency for Health Care Administration to make sure the waiver request does not conflict with any State requirements and all concerns are addressed timely.

10. Recommended language

Some recommended language to include in addition to any specific requests for your organization is as follows:

The blanket waivers issued by CMS did not directly address the critical role performed by hospice providers in delivering compassionate palliative care during this nationwide public health emergency. In addition to clarifying that hospice providers are specifically included in the categories of providers to which the blanket waivers apply, we ask that CMS afford these providers with additional flexibility to confront the challenges caused by COVID-19 through the following waiver requests:

- Suspending all face-to-face visit requirements by hospice physicians and nurse practitioners in favor of permitted telephone and telehealth modalities (42 C.F.R. § 418.22(a)(4));
- Extending the five-day timeframe for hospice providers to submit Notices of Election and Notices of Termination/Revocation (42 C.F.R. § 418.24);
- Encouraging all included hospice services to be provided virtually through telephone and telehealth modalities as determined by the hospice plan of care, including visits from all hospice disciplines, including nursing, social worker, spiritual services, bereavement and other counseling, and any other type of service specified in the plan of care;
- Temporarily suspending the requirement of supervision of hospice aides by a registered nurse every 14 days for hospice agencies (42 C.F.R. § 418.76);
- Suspending the requirement that hospices conduct background checks on employees with direct patient contact or access to records before hiring them, such that employees can be onboarded while the background check is processed (42 C.F.R. § 418.113);
- Suspending the volunteer requirements to reflect that many hospice volunteers, who tend to be elderly themselves, are not visiting patients and respecting limitations on social interaction (42 C.F.R. § 418.78(b)); and
- Limiting the provision of rehabilitative services, including physical therapy, occupational therapy, and speech therapy as these services tend to be limited in hospice care generally, workforce challenges are becoming more acute, and the suspension of these services will serve to respect calls for limited social interaction.
- Delay the implementation of the hospice election statement changes and the hospice election statement addendum, scheduled to begin on October 1, 2020 until two months after the national emergency is concluded.

11. Who is my regional CMS administrator?

- ROATLHSQ@cms.hhs.gov (Atlanta RO): Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee
- RODALDSC@cms.hhs.gov (Dallas RO): Arkansas, Louisiana, New Mexico, Oklahoma, Texas
- ROPHIDSC@cms.hhs.gov (Northeast Consortium): Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia, New York, New Jersey, Puerto Rico, Virgin Islands, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
- ROCHISC@cms.hhs.gov (Midwest Consortium): Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Iowa, Kansas, Missouri, Nebraska ROSFOSO@cms.hhs.gov (Western Consortium): Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, Alaska, Idaho, Oregon, Washington, Arizona, California, Hawaii, Nevada, Pacific Territories.

12. Does the 1135 waiver include flexibility for state specific regulatory requirements?

No, under section 1135, only certain Federal requirements relating to Medicare, Medicaid, CHIP, and HIPAA may be waived or modified. An 1135 waiver does not affect State laws or regulations.

13. Do CMS 1135 waivers apply to Medicaid?

Yes, CMS 1135 waiver authority includes the ability to grant state and territorial Medicaid agencies a wider range of flexibilities, and states may now submit Section 1135 waiver requests for CMS approval that will remove administrative burdens and expand access to needed services. [Here is a complete list of state 1135 waivers.](#)