

ARTICLE

1135 Waivers: What They Are and How to Use Them During COVID-19

| JUL 22, 2021

<https://www.greeley.com/insights/1135-waivers-what-they-are-and-how-use-them-during-covid-19>

As expected, the Director of Health and Human Services, Xavier Becerra, extended the nationwide public health emergency for 60 days on July 20, 2021. What it means: 1135 waivers remain an option if your state/county has also declared a state of emergency, plus you have a legitimate reason for not complying with the waived requirement—including the activation of your organization's disaster/emergency management plan.

The following is a brief summary of the process for obtaining pandemic-related waivers of federal requirements. Follow the links at the end of this post for additional details.

What is an 1135 Waiver?

There are many different ways to gain relief from a regulatory requirement. The 1135 Waiver is just one of them.

An "1135 Waiver" is authorized by Section 1135 of the Social Security Act and allows CMS to waive certain requirements during national emergencies. The COVID-19 pandemic is classified as a national emergency.

What can be waived?

Under section 1135 of the Social Security Act, CMS may waive a broad range of requirements, including but not limited to:

- any requirement found in the Medicare Conditions of Participation;
- requirements that health care professionals have a state license; and
- EMTALA requirements related to patient transfers an alternative screening locations.

For example, an organization may request a waiver for:

- medical staff appointments that go beyond two years,
- timeframes for routine preventive maintenance or inspections that lapse,
- variations from staffing plans,
- air flow, humidity and temperature requirements,
- physical environment requirements to accommodate temporary/surge structures;
- streamlining documentation, and
- ... anything that cannot or should not be performed because of the national emergency.

How long does the waiver last?

The waver lasts for the duration of the national emergency, subject to review and renewal each 60 days.

Are 1135 Waivers retroactive?

1135 Waivers can be back-dated, however they only have effect during the national emergency. The waiver will not have any effect before the date the national emergency was declared by the President of the United State and the Secretary of Health and Human Services.

What is a Blanket 1135 Waiver?

Blanket waivers are the suspension of a regulatory requirement that applies to all providers of a certain type. CMS has granted multiple blanket waivers to the Conditions of Participation and other CMS healthcare programs. No application is necessary for a blanket waiver. The list of blanket waivers is a moving target, so, we usually advise our clients to ask for a provider-specific waiver any time your organization cannot meet a CMS requirement due to the COVID-19 pandemic.

What blanket waivers have been issued by CMS?

Requirements for all provider types and aspects of Medicare and Medicaid have been loosened. Some waivers address enrollment, reimbursement, and cost accounting. Waived requirements addressing hospital operations as of March 30, 2020 include, but are not limited to, the following:

- There is extreme flexibility in alternate patient care and testing venues, including alternate inpatient and outpatient care buildings.
- Dedicated emergency departments may direct patients to off-site locations for screening without triggering EMTALA problems during the pandemic.

- Time frames have been extended for completing medical records, authentication of verbal orders, and providing copies of medical records to patient representatives.
- Hospitals may allow individuals to practice a healing art without a currently valid state license (assuming the state has similarly waived the licensure requirement).
- The requirement to have written policies for visitation to COVID-19 patients has been waived.
- The rules governing patient seclusion have been waived.
- The utilization review condition of participation has been suspended in its entirety.
- The reporting of certain restraint-related deaths has been suspended.
- Nursing care plans are not required.
- The scope of the quality assessment and performance improvement program may be narrowed.
- Medicare patients do not necessarily need to be under the care of a physician during hospitalization.
- The rules for supervising certified registered nurse anesthetists (CRNAs) have been relaxed.

How does an organization apply for a 1135 waiver not covered by one of the existing blanket waivers?

A provider-specific 1135 Waiver is requested by sending an email to one of five CMS offices (two regional offices and three consortia of regional offices). The email should be copied to the state agency responsible for conducting CMS surveys.

In addition to contact information (organization, provider type, CCN, contact, etc.), the request must specify:

1. the specific regulatory provision(s) for which a waiver is requested, and
2. a brief description of why the waiver is needed.

How can Chartis Clinical Quality Solutions help?

1. We can help you identify specific regulations that need to be waived to accommodate your current or projected situation.
2. We can also review state licensing regulations to see what, if any, state waivers are needed.
3. We can draft the waiver request for you to submit to the state and CMS.

If your organization needs assistance with 1135 waivers, please **contact us** to learn more about how we can partner with you through this challenging time.

Additional Resources:

Social Security Act, Section 1135:

https://www.ssa.gov/OP_Home/ssact/title11/1135.htm

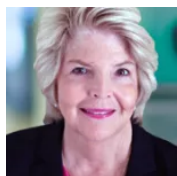
CMS: What Information to Providers Supply for an 1135 Waiver request:

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/What-Information-to-Provide-for-an-1135-Waiver-Request.pdf>

CMS: Frequently Asked Questions: Declared Public Health Emergencies:

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/All-Hazards-FAQs.pdf>

LEARN MORE ABOUT THE AUTHOR



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