
COVID-19 Waivers: What Providers Can and Can't Do

March 25, 2020





Martie Ross, JD
Principal, Strategy & Integration
mross@pyapc.com



Kathy Reep
Senior Manager, Business Development
kreep@pyapc.com

Agenda



1. Overview - Section 1135 Waivers
2. Initial COVID-19 Blanket Waivers
3. COVID-19 Individual State Waivers
4. COVID-19 Individual Provider Waivers
5. Question & Answer

Telehealth Waiver



- Waiver of geographic and location restrictions for Medicare reimbursement
- On-Demand Waiver available at <https://www.pyapc.com/insights/covid-19-telehealth-waiver-made-simple/>
- CMS promising additional guidance soon

Overview – Section 1135 Waivers



Legislative Authority



President declares a disaster or emergency under Stafford Act or National Emergencies Act + HHS Secretary declares public health emergency

HHS Secretary may authorize CMS' waiver of specified Medicare/Medicaid program requirements

CMS then issues blanket waivers and approves individual waiver requests from states and providers

Each waiver remains in effect for 60 days (can be renewed) or end of emergency

**Federal requirements only;
state requirements not impacted**

Waiver of Program Requirements



1. Conditions of participation or other certification requirements
2. Program participation and similar requirements
3. Pre-approval requirements
4. Requirements that professionals be licensed in State in which provide services
5. EMTALA requirements as they relate to (a) transfer of individual who has not been stabilized; and (b) relocation of individual for screening at alternative location
6. Sanctions for violations of Stark rules
7. Modification of deadlines and timetables for performance of required activities
8. Limits on payments for services furnished to Medicare Advantage plan enrollees by health care professionals or facilities not included in plan's network
9. Enforcement of certain HIPAA patient privacy provisions
10. Three-day prior hospital stay requirement for SNF stay coverage (Section 1812(f))

- For any claim that would not be reimbursable in absence of Section 1135 waiver, a provider must apply the following:
 - “**DR**” (disaster related) condition code for **institutional billing** (i.e., claims submitted using ASC X12 837 institutional claims format)
 - “**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, for pharmacies, in NCPDP format).
- DOES NOT apply to telehealth services

Other Options for Regulatory Relief



- Informal waiver of procedural norms reflected in CMS guidance or policy (vs. regulation or statute)
- Exercise of agency enforcement discretion
 - E.g., streamlined hospital & SNF survey process
 - Limited to Immediate Jeopardy + targeted infection control inspections; no standard surveys or re-inspections
- Publication of interim final rules with comment period

Initial Blanket Waivers



Relevant Documents – To Date



- ✓ March 13 COVID-19 Emergency Declaration Health Care Provider Fact Sheet
- ✓ March 18 MLN Matters Special Edition Article
- ✓ OCR COVID-19 & HIPAA Bulletin – Limited Waiver of HIPAA Sanctions and Penalties During a Nationwide Public Health Emergency

Links to documents at <https://www.pyapc.com/covid-19-hub/>

Five Categories



1. Hospital Capacity

2. Workforce

3. Administrative Requirements

4. HIPAA

5. EMTALA

1. Hospital Capacity



Skilled Nursing Facilities

- Medicare will pay for SNF stays without prior 3-day hospital stay

Hospital Distinct Part Units

- May place acute patients in distinct part units, provided appropriate acute care may be provided in those beds
- May place distinct part unit patients (psych and rehab) into acute beds, provided those patients will continue to receive appropriate care. Bill for services under psych/rehab IPPS.

Critical Access Hospitals

- May exceed 25 bed and 96 hour limitations

Any action must be necessitated by COVID-19 response

Statement by AHIP Board of Directors



“Patients who can be treated safely in alternate sites of care for post-acute care services should be quickly moved to those facilities.... The discharging and receiving facilities simply need to notify the health insurance provider the following business day.”

“Additionally, the AHIP Board of Directors is committed to matching the waivers (e.g., post-acute) provided by Medicare to facilitate access to care in the Medicare program where applicable and will temporarily suspend or relax additional policies as needed in regions where inpatient capacity is most compromised and most at risk. We strongly encourage all health insurance providers to adopt and implement this approach during this current public health emergency.”

2. Workforce



- **State Licensure** – waive requirement that physician or non-physician practitioner be licensed in state in which furnishing services, but only if providing services in “unlicensed” state due to emergency
 - *Does not impact state law requirements*
- **Provider Enrollment for Physicians and Non-Physician Practitioners** - Toll-free hotlines to enroll and receive temporary Medicare billing privileges; waive fingerprint-based criminal background checks and site visits; postpone all revalidation actions
- **Other Provider Enrollment** – Expedited processing of web-based and paper applications; waive application fee; waive fingerprint-based criminal background checks and site visits; postpone all revalidation actions

3. Administrative Requirements



Medicare Appeals

Extend period in which to file; waive timeliness for requests for additional information; process appeals with incomplete Appointment of Representation forms; process requests for appeal that do not meet required elements

Home Health Agencies

Relieve timeframes related to OASIS Transmission; permit MACs to extend auto-cancellation date of Requests for Anticipated Payment

Skilled Nursing Facilities

Authorizes renewed SNF coverage for beneficiaries who recently exhausted benefits without having to start new benefit period; relieve timeframes for MDS assessments and transmission

DMEPOS

Waive replacement requirements in those cases in which beneficiary's DMEPOS is unusable or unavailable due to emergency

Part B Drugs

Coverage for replacement prescriptions if dispensed medication is unusable or unavailable due to the emergency

4. HIPAA



- Waives penalties for hospital's non-compliance with:
 - Requirement to obtain a patient's agreement to speak with friends/family members involved in patient's care.
 - Requirement to honor request to opt out of facility directory.
 - Requirement to distribute a notice of privacy practices.
 - Patient's right to request privacy restrictions.
 - Patient's right to request confidential communications.
- Waiver only applies to hospital that has instituted disaster protocol, and only for up to 72 hours from when hospital implements its protocol

5. EMTALA



March 9 Guidance (pre-waiver)

- On-campus alternative screening sites
 - Qualified clinician may re-direct patients from ED
- Off-campus alternative screening sites
 - May encourage public to go to these sites, but cannot re-direct patients from ED

Expanded options under EMTALA waiver for hospital that has activated its disaster plan

- May direct or relocate individuals who come to ED to alternative off-campus site, but only in accordance with State emergency preparedness plan
- May make transfers normally prohibited under EMTALA of individuals with unstable emergency medical conditions, so long as transfer is necessitated by COVID-19 emergency

Individual State Waiver Requests



Section 1135 Waivers



- State must submit waiver request to appropriate CMS Regional Office
- CMS published “check-box” waiver request template on March 22
 - Medicaid Authorizations
 - Long Term Services and Supports
 - Fair Hearings
 - Provider Enrollment
 - Reporting and Oversight
- States also may request additional waivers, including Medicare program requirements
- Approved to date: Alabama, Arizona, California, Florida, Illinois, Louisiana, Mississippi, New Hampshire, New Jersey, New Mexico, North Carolina, Virginia, and Washington.
- In addition to Section 1135 waivers, State Medicaid programs may submit disaster relief state plan amendments; may request 1915(c) Home and Community-Based Services emergency waivers; and may exercise flexibility in meeting certain timeliness standards

EMTALA

- Suspend requirement to obtain special designation for Qualified Medical Professionals

Distinct Part Units

- Waiver of rehab specific requirements for acute care patients housed in rehab DPUs (intensive rehab program, pre-admission screening, IRF-PAI/IRF QRP)

Physical Environment

- Allow non-hospital buildings/space to be used for patient care
- Allow use of technology and physical barriers that limit exposure
- Allow examination and treatment in patient vehicles

Additional Waivers - Documentation



Use of verbal orders more than “infrequently”/authentication later than 48 hours

Delay reporting of SOME restrained ICU patient deaths

Completion of medical records later than 30 days following discharge

Waive medical staff review and approval of standing orders

Waiver of requirements involving physical signature of patient/patient representative

Waive requirement to provide information related to advance directives

Additional Waivers - Reimbursement



Waive timely filing

Waive 60-day rule for processing overpayments

Require MACs to suspend medical review, auditing, and some benefit integrity activities

Provide relief for CAHs from meeting scheduled payments tied to prior year cost reports

- Allow flexibility in payment requests prior to final settlement

Waiver Request Submission



ROATLHSQ@cms.hhs.gov (Atlanta RO): Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

RODALDSC@cms.hhs.gov (Dallas RO): Arkansas, Louisiana, New Mexico, Oklahoma, and 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, and Vermont.

ROCHISC@cms.hhs.gov (Midwest Consortium): Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Iowa, Kansas, Missouri, and Nebraska.

ROSFOSO@cms.hhs.gov (Western Consortium): Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, Alaska, Idaho, Oregon, Washington, Arizona, California, Hawaii, Nevada, and the Pacific Territories.

Individual Provider Waiver Requests



- March 13 order invoking Section 1135 authorized CMS waive sanctions under the Stark law “in such circumstances as the [agency] determines appropriate”
- Not included in blanket waivers; presumably CMS will review on case-by-case basis
- Only one reported example of emergency Stark waiver following Hurricane Katrina

Urged CMS, the OIG, and the Department of Justice to suspend enforcement of the Stark law and the Anti-Kickback Statute “to enable hospitals to efficiently meet the demands of the public health crisis and compensate referring physicians and their family members.”

Asked CMS to “adopt an exception to the definition of ‘compensation arrangement’ under [the Stark law] for any compensation paid to a physician or a physician’s immediate family member in return for a service necessary to the hospitals response to the COVID-19 public health crisis.”

Physician Financial Arrangements



Reducing impact of cancelled elective procedures on employed physicians with productivity-based compensation

Re-deployment of employed specialist physicians to ICU/ER or telehealth services

Independent contractor arrangements with community physicians to provide ER/ICU coverage or telehealth services

Contracts for purchase or lease of equipment and supplies

Direct financial assistance to community physicians impacted by cancellation of elective procedures

Waive or defer lease payments for independent physicians in hospital office building

Staff leasing arrangements

Assistance to community physicians with telehealth deployment

Beneficiary Inducements



- Offering remuneration to beneficiary likely to influence selection of provider prohibited under Civil Monetary Penalties Act – liable for up to \$10,000 per inducement
- Potential remuneration relating to quarantine
 - Provide housing/meals/other assistance during quarantine period
- Potential remuneration to facilitate telehealth
 - Making available smartphone/tablets, monitoring devices (e.g., thermometers)
 - Providing personal assistance with telehealth visit

Waiver Request



- Submit written request to appropriate CMS Regional Office; copy state survey agency
- Content
 - Provider Name/Type
 - Full Address
 - Medicare provider number
 - Contact person and contact information (available to address any questions)
 - Brief summary of why the waiver is needed (scope of issue and impact)
 - Requested relief (identify specific regulatory requirements requestor is seeking to be waived)

GETTING ONLINE WITH TELEHEALTH: PRACTICAL GUIDANCE FOR PHYSICIAN PRACTICES

THURSDAY, MARCH 26 - 4 PM EDT

- Technology options and speed-to-implementation
- Solutions to internal process challenges
- Patient engagement in telehealth

Please register at www.pyapc.com