

**Section 1135 Waiver COVID-19  
State/Territory Request Template**

**Introduction**

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and consistent with section 1135 of the Social Security Act (Act). On the same day, pursuant to section 1135 of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act to mitigate the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Daylight Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and waivers will no longer be available, upon termination of the public health emergency, including any extensions.

States/territories can request approval that certain statutes and implementing regulations be waived by CMS, pursuant to section 1135 of the Act. The following list includes some of the temporary flexibilities available to CMS under section 1135 of the Act. Please check the box on the flexibilities that the state/territory is requesting. Please include any additional flexibilities that the state/territory is requesting under the section 1135 waiver authority under “Number 6 – Other Section 1135 Waiver Flexibilities”.

Please complete the following fields:

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### 1) Medicaid Authorizations:

- Suspend Medicaid fee-for-service prior authorization requirements. Section 1135(b)(1)(C) allows for a waiver or modification of pre-approval requirements if prior authorization processes are outlined in detail in the State Plan for particular benefits
- Require fee-for-service providers to extend pre-existing authorizations through which a beneficiary has previously received prior authorization through the termination of the emergency declaration

### 2) Long Term Services and Supports

- Suspend pre-admission screening and annual resident review (PASRR) Level I and Level II Assessments for 30 days
- Extend minimum data set authorizations for nursing facility and skilled nursing facility (SNF) residents

### 3) Fair Hearings

- Allow managed care enrollees to proceed almost immediately to a state fair hearing without having a managed care plan resolve the appeal first by permitting the state to modify the timeline for managed care plans to resolve appeals to one day so the impacted appeals satisfy the exhaustion requirements
- Give enrollees more than 120 days (if a managed care appeal) or more than 90 days (if an eligibility for fee-for-service appeal) to request a state fair hearing by permitting extensions of the deadline for filing those appeals by a set number of days (e.g., an additional 120 days)

### 4) Provider Enrollment

- Waive payment of application fee to temporarily enroll a provider
- Waive criminal background checks associated with temporarily enrolling providers
- Waive site visits to temporarily enroll a provider
- Permit providers located out-of-state/territory to provide care to an emergency State's Medicaid enrollee and be reimbursed for that service

- Streamline provider enrollment requirements when enrolling providers
- Postpone deadlines for revalidation of providers who are located in the state or otherwise directly impacted by the emergency
- Waive 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
- Waive conditions of participation or conditions for coverage for existing providers for facilities for providing services in alternative settings, including using an unlicensed facility, if the provider's licensed facility has been evacuated

## **5) Reporting and Oversight**

- Modify deadlines for OASIS and Minimum Data Set (MDS) assessments and transmission
- Suspend 2-week aide supervision requirement by a registered nurse for home health agencies
- Suspend supervision of hospice aides by a registered nurse every 14 days' requirement for hospice agencies

6) **Other Section 1135 Waiver Flexibilities.** Please include any additional flexibilities that the state/territory is requesting under the Section 1135 waiver authority:

**Long Term Services and Supports:**

- Enable certain beneficiaries who recently exhausted their SNF benefits to obtain renewed SNF coverage without first having to start a new benefit period
- Waive 42 CFR 483.35(d)(1): Extend the time period for nurse aides to work for 7 months (210 days) in a facility without completing the training program.

**Provider Enrollment:**

- Waive the managed care requirements to complete credentialing of providers required under 42 C.F.R. § 438.214. Newly enrolled providers will not be required to credential during the emergency; enrolled providers who are due for recertification will be allotted 60 additional days and will not be terminated for failure to respond during the emergency
- Waive the requirement for fingerprint background checks for Narcotic Treatment Programs

**Provider Settings:**

- Waive the Critical Access Hospital limit of beds to 25 and length of stay to 96 hours
- Allow providers to receive payments for services provided to affected beneficiaries in alternative physical settings, such as mobile testing sites, temporary shelters or other care facilities, including but not limited to, convention centers, hotels, other places of temporary residence, and other facilities that are suitable for use as places of temporary residence or medical facilities as necessary for quarantining, isolating or treating individuals who test positive for COVID-19 or who have had a high-risk exposure and are thought to be in the incubation period or to expand overall capacity to meet high demand.
- Allow a long-term care hospital (LTCH) to exclude patient stays where a LTCH admits or discharges patients in order to meet the demands of the emergency from the 25-day average length of stay requirement
- Temporarily suspend application of EMTALA Emergency Medical Treatment and Labor Act (“EMTALA”) Requirements (42 U.S.C. § 1395dd(a) and Accompanying Regulations)
  - Medical Screening Examination (“MSE”) Waivers:
    - Due to capacity issues, we request that hospitals have the ability to triage individuals who come to the emergency department and divert individuals without an obvious emergency medical condition to alternative COVID-19 screening sites located on or off the hospital’s main campus. Additionally, we request that off-campus “designated emergency departments” (such as urgent care centers), which have been designated as influenza-like-illness screening centers and are only providing influenza-like screening services and testing during this public health emergency, have the ability to divert individuals who do not need influenza-like screening services to an alternate dedicated emergency department without conducting a medical screening exam (“MSE”).
    - We also request that CMS permits MSEs to be conducted by other qualified staff authorized by the hospital and acting within their state scope of practice and

licensure and who are not otherwise formally designated to perform MSEs in the hospital by-laws or in the rules and regulations.

- Expand Definition of Appropriate Transfer (42 U.S.C. § 1395dd(c)(2)): Expanding the definition of an appropriate transfer under EMTALA will allow for the transfer of patients to a facility offering a lower level of care, so long as the accepting facility has the capacity and capability to treat the patient. Similarly, we request hospitals be allowed to deny transfers unless the accepting facility offers a level of care needed by the patient that cannot be provided by the transferring hospital.
- Allow hospice evaluations to be performed via video mediums
- Allow home health assessments to be performed via telehealth
- Allow telemedicine/telephonic supervision of self-administration for individuals receiving Opioid Maintenance treatment and who have been allowed take-home medications due to the emergency

**Reporting & Oversight:**

- Temporarily suspend the application of sanctions and penalties arising from non-compliance with HIPAA requirements
- Provide relief and flexibility to the State and providers around deadlines and timetables for required reporting and oversight activities