

FAQ on Medicare and Medicaid Section 1135 Waivers and How They Affect CRNA Practice

1) Question: What are Section 1135 waivers?

Answer: Section 1135 waivers provide a temporary relaxation of certain, healthcare regulatory requirements in the event of a declared disaster or emergency. In the past, the waivers have been issued for natural disasters and pandemics, such as Hurricane Katrina and H1N1 influenza, and focused on specific concerns related to those events and their impact on the healthcare system and provision of care. Section 1135 Waivers are useful in addressing any Medicare/Medicaid provider enrollment-related issues and flexibilities questions or concerns. They are meant to allow sufficient health care items and services to be available to meet the needs of Medicare, Medicaid and CHIP beneficiaries and allow health care providers that provide such services in good faith can be reimbursed for them and not subjected to sanctions for noncompliance, absent any fraud or abuse.

2) Question: What brought about Section 1135 Waivers?

Answer: On January 31, 2020, the Secretary of Health and Human Services (HHS) declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19. On March 13, President Trump declared a national emergency due to COV-19. As a result of these declarations, the Secretary of HHS may exercise the authority under section 1135 of the Social Security Act to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the public health emergency declared in response to the COVID-19 outbreak.

3) Question: How can CMS implement these waivers?

Answer: CMS may implement Section 1135 waivers in several ways, although all require that CMS determine that a provider has been affected by the disaster or emergency that prompted the issuance of the waivers. CMS has the option to issue Section 1135 waivers that require providers to request and receive approval for relief on a case-by-case basis, or CMS can implement "blanket" waivers. Blanket waivers may be issued when CMS has determined that all similarly situated providers in an identified emergency area need such a waiver or modification. Often, as with natural disasters, the "emergency area" is limited. In other cases, such as pandemics, the emergency area may be much more expansive. CMS considers several factors when determining whether to provide a specific or blanket waiver or modification, including the scope and severity of the emergency, the expected duration, feedback from the state survey agency and state and federal emergency response officials, and supporting data gathered by state provider associations. Any waivers or modifications issued by CMS pertain only to federal requirements, and providers must ensure that any steps they take in accordance with the waivers also comport with state law.

4) Question: What Medicare and Medicaid flexibilities can states seek through a Section 1135 waiver request?

Answer: See the flexibilities below (these are federal flexibilities and not regarding state licensure):

- **Provider Locations:** Temporary waiver of the requirement that out-of-state providers be licensed in the state where they provide services when they are licensed in another state. This temporary waiver applies to Medicare and Medicaid reimbursement requirements but not to CHIP or state licensing requirements.
- **Provider Enrollment:** Establishment of a toll-free hotline for non-certified Part B suppliers, physicians and non-physician practitioners to enroll and receive temporary Medicare billing privileges. Waiver of the application fee, finger-based criminal background checks and site visit typically part of the screening requirements. Postponement of all revalidation actions. Ability for licensed providers to render services outside of their state of enrollment, and expedited handling of any pending or new applications from providers.
- **Medicare Appeals in Fee-for-Service, Medicare Advantage and Part D:** Extension of time to file an appeal and waiver of timeliness for requests for additional information to adjudicate the appeal. Appeals will be processed even with incomplete Appointment of Representation forms, but communicating only to the beneficiary. Requests for appeal that do not meet the required elements will be processed using information that is available. All flexibilities available will be used in the appeal process as if good cause requirements are satisfied.
- **Skilled Nursing Facilities (SNFs):** Waiver of the three-day prior hospitalization requirement for coverage of an SNF stay. Beneficiaries may be transferred because of the emergency without a prior qualifying hospital stay, and certain beneficiaries' SNF coverage, once benefits are exhausted, may be renewed. CMS also waived the timeframe requirements for Minimum Data Set assessments and transmission.
- **Critical Access Hospitals (CAHs):** Waiver of the 25-bed limit requirement for CAHs and waiver of 96-hour limit on length of stays.
- **Housing Acute Care Patients in Excluded Distinct Part Units:** Waiver to allow acute care hospitals to house acute care inpatients in excluded distinct part units. The Inpatient Prospective Payment System hospital is instructed to annotate in the medical record that the patient is an acute care inpatient being housed in the excluded unit because of capacity issues related to the emergency.
- **Durable Medical Equipment (DMEPOS):** Authorization for contractors to waive the face-to-face visit, new physician's order or medical necessity requirements for replacement of DMEPOS when the DMEPOS is lost, destroyed, irreparably damaged, or otherwise rendered unusable or unavailable as a result of the emergency.
- **Care for Excluded Inpatient Psychiatric Unit Patients in the Acute Care Unit of a Hospital:** Ability for acute care hospitals to relocate inpatients from excluded distinct part psychiatric units to acute care beds and units if necessary. The affected hospital is instructed to annotate the medical record to indicate the patient is a psychiatric inpatient being cared for in an acute care bed because of capacity or exigent circumstances related to the emergency.
- **Care for Excluded Inpatient Rehabilitation Unit Patients in the Acute Care Unit of a Hospital:** Ability for acute care hospitals to relocate inpatients from excluded distinct part rehabilitation units to acute care beds and units if necessary. The affected hospital is instructed to annotate the medical record to indicate the patient is a rehabilitation inpatient being cared for in an acute care bed because of capacity or exigent circumstances related to the emergency.
- **Supporting Care for Patients in Long-Term Care Acute Hospitals (LTCHs):** Ability for LTCHs to exclude patient stays where an LTCH admits or discharges patients in order to meet the demands of the emergency from the 25-day average length of stay requirement otherwise applicable to LTCHs.
- **Home Health Agencies (HHAs):** Relief to HHAs regarding the timeframes related to OASIS Transmission and allowing Medicare Administrative Contractors to extend the auto-cancellation date of Requests for Anticipated Payment during emergencies (note that this is an extension of time and not a waiver of completion).
- **Part B Prescription Refills:** Medicare payment may be permitted for replacement prescription fills (for a quantity up to the amount originally dispensed) of covered Part B drugs in circumstances where

dispensed medication has been lost or otherwise rendered unusable or unavailable due to the emergency.

5) Question: Did CMS release guidance on how these waivers affect CRNA practice?

Answer: The current CMS guidance does not focus on specific areas that affect CRNA anesthesia practice such as working in ICUs ORs and triaging incoming COVID-19 patients. However, the agency releases guidance almost daily and the AANA is tracking the [CMS coronavirus web page](#) to see if there is information that can be added to this FAQ.

6) Question: Approximately how long will the process take for approving/denying a waiver request?

Answer: CMS will review and validate the 1135 waiver requests utilizing a cross regional Waiver Validation Team. The cross-regional Waiver Validation Team will review waiver requests to ensure they are justified and supportable. HHS anticipates that requests to operate under 1135 Waiver flexibilities should be responded to within three business days of receipt.

7) Question: Do Section 1135 waivers affect State laws or regulations?

Answer: 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.

8) Question: What do the Section 1135 waivers not do?

Answer: 1135 waivers are not a grant or financial assistance program. They do not allow for reimbursement for services otherwise not covered. They do not allow individuals to be eligible for Medicare who otherwise would not be eligible. And they do not last forever - they last 30-60 days or the duration of the emergency.

9) Question: How does a state apply for a Section 1135 waiver?

Answer: There is no specific form or format that is required to submit the request for a Section 1135 waiver, but the state should clearly state the scope of the issue and the impact. States and territories may submit a Section 1135 waiver request to 1135waiver@cms.hhs.gov.

10) Question: Is there a list of states who have applied for Section 1135 waivers?

Answer: The Centers for Medicare and Medicaid Services has an up to date list of states who have applied for these waivers. This can be found at: <https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page>. In addition, Kaiser Family Foundation has posted a list of state data and state health care policy actions regarding coronavirus. This can be found at: <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/#policyactions>.