



Overview of CMS 1135 Waivers

1135 Waiver

A Social Security Act §1135 [42 U.S.C. 1320b–5] Waiver modifies certain requirements for Medicare, Medicaid, and Children’s Health Insurance Program (CHIP) when the President declares a disaster or emergency and when the Health and Human Services Secretary declares a public health emergency. These waivers provide a mechanism for HHS and CMS to accommodate healthcare providers in the event of a disaster or other significant emergency. These waivers end when the emergency is terminated, or 60 days from the date the waiver or modification is first published.

Trigger Points

In determining whether to invoke an 1135 Waiver (once the conditions precedent to the authority’s exercise have been met), the Assistant Secretary for Preparedness and Response (ASPR) convenes a meeting of relevant operating divisions to determine the need and scope for such modifications. Information considered includes requests from Governor’s offices, feedback from individual healthcare providers and associations, requests to regional or field offices for assistance, and information obtained from the Secretary’s Operation Center. The intent is to determine whether the waivers or modifications allowed under the 1135 Waiver Authority will assist healthcare providers in dealing with the response to a disaster.

- 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 (Medicare, Medicaid, and CHIP)
- EMTALA sanctions for redirection of an individual in an alternative location pursuant
- Stark self-referral sanctions
- Performance deadlines and timetables may be adjusted (but not waived)
- Limitations on payment to permit Medicare enrollees to use out of network providers in an emergency situation

Implementation of 1135 Waiver Authority

Once an 1135 Waiver is authorized, health care providers should submit requests to operate under that authority to the State Survey Agency or [CMS Regional Office](#). Without such approval, providers must operate under normal rules and regulations. The requests must include a justification for the waiver and the expected duration of the modification requested. Providers are expected to come into compliance with any waived requirements prior to the end of the emergency period.

Blanket Waiver Modifications

CMS may implement specific “blanket” waivers or modifications under the 1135 authority when a determination has been made that all providers in the emergency area need such a waiver or modification. This determination is based on the need and frequency of requests for specific waivers. Providers should still notify the State Survey Agency and CMS Regional Office if operating under these modifications to ensure proper payment.

[Source link](#)