



SECTION 1135 WAIVERS

What is a Section 1135 Waiver?

Section 1135 of the *Social Security Act* allows the U.S. Secretary of Health and Human Services (HHS) to temporarily waive or modify certain Medicare, Medicaid, Children's Health Insurance Program (CHIP) or Health Insurance Portability and Accountability Act (HIPAA) provisions during the time of an emergency. For this to take place, the President must declare a national emergency under the National Emergencies Act or the Stafford Act and the HHS Secretary must declare a public health emergency determination. It is important to note that a state declaration of emergency does not trigger Section 1135 applicability; only national declarations unlock this option for states.

During an emergency, HHS can proactively issue "blanket waivers" to waive or modify existing regulations for all providers of a certain type within a certain geographic area. Additionally, states looking to waive components of their state Medicaid or CHIP programs are allowed to submit waiver proposals to the Centers for Medicare and Medicaid Services (CMS) for approval. If approved, these waivers may take effect immediately or may be retroactive to the beginning of the emergency declaration. With a few exceptions, Section 1135 waivers generally expire upon termination of the emergency disaster declaration.

What can be Waived Under a Section 1135 Waiver?

Only federal regulations may be waived under Section 1135. A majority of Medicaid and CHIP statute cannot be waived even through the Section 1135 process, yet flexibility through the waiver process exists to allow physicians and other providers to address emergency situations. A Section 1135 waiver can waive the following:

- Conditions of provider participation or certification requirements (i.e. the requirement that a physician be a certified Medicaid provider prior to the emergency)
- Pre-approval requirements for providers and services (i.e. prior authorization requirements for fee-for-service arrangements)
- Requirements that physicians and other providers be licensed in the state they're providing services
- EMTALA sanctions that prohibit the moving of non-stable patients for screening or because of emergency circumstances
- Physician self-referrals under the Stark Act in which the physician may personally benefit financially
- Deadlines and timetables for required activities (may be modified but not waived)
- Limits on Medicare Advantage payments to out-of-network providers
- Sanctions for certain HIPAA noncompliance provisions

Emergency Declarations

Natural Disasters

Section 1135 waivers have typically been granted in the aftermath of natural disasters, including hurricanes, for example Hurricane Katrina in 2005, and flooding, such as the North Dakota floods in 2009-10, which result in large patient burdens. More recently, CMS granted North Carolina Section 1135 relief after Hurricane Dorian hit the state in September 2019. The state's approved Section 1135 [request](#) waived limits on critical access hospital stays, temporarily suspended EMTALA-related sanctions, eliminated certain prior authorization requirements, and waived certain provider screening requirements, among other things.

Disease Epidemics/Pandemics

Most recently, Section 1135 waivers have been invoked to address the nation’s response to the COVID-19 pandemic. President Donald Trump’s declaration of a national emergency on March 13, 2020, along with HHS Secretary Azar’s earlier public health emergency, permitted Azar to allow states to invoke Section 1135 to waive certain provisions of a number of programs that have federal components. The Secretary’s “blanket” COVID-19 Section 1135 [waiver](#), which covers the entire nation and is retroactive to March 1, 2020, is largely limited to Medicare, but also includes language applicable to Medicaid which waives requirements to allow out-of-state providers, including physicians, to be licensed in that state as long as they are licensed in another state.

In addition to HHS’ blanket Section 1135 waiver, CMS has approved individual Section 1135 [waivers](#) for all 50 states and DC to waive further Medicaid components under the Section 1135 process. They incorporated many provisions from a suggested [list](#) published by CMS on March 22 and include additional ways for states to address their Medicaid programs during the duration of the emergency declaration, in areas related to prior authorization, long-term services and supports (LTSS), and provider enrollment. A compiled list of provisions within each state’s individual waiver are listed below.¹

COVID-19 Section 1135 waiver provision	Applicable states
Waive certain provider screening requirements	50 states and DC
Postpone deadlines for revalidation of providers	50 states and DC
Allow out-of-state providers with equivalent licensing in another state	50 states and DC
Permit out-of-state providers to provide care to emergency state’s Medicaid enrollee	50 states and DC
Allow service provision in alternative settings, including unlicensed facilities	43 states and DC: AK, CA, CO, CT, DE, FL, GA, HI, IA, ID, IL, IN, KY, LA, MA, MD, ME, MI, MO, MN, MS, MT, NC, NE, NH, NJ, NV, NY, OK, OH, OR, PA, RI, SC, SD, TN, UT, VA, VT, WA, WI, WV, WY
Suspend fee-for-service prior authorizations	42 states and DC: AK, AR, AZ, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, KS, KY, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NY, OK, OH, OR, PA, RI, UT, VA, VT, WA, WI, WV, WY
Require fee-for-service providers to extend pre-existing prior authorizations	39 states and DC: AK, AL, AZ, CA, CO, CT, DE, FL, GA, ID, IL, IN, KS, LA, MA, MD, ME, MI, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OR, PA, RI, SC, TX, VA, VT, WA, WI, WV
Allow managed care enrollees to bypass health plan appeal and go directly to fair hearing	34 states and DC: AR, CA, CT, DE, FL, HI, IL, IN, KS, KY, LA, MA, MD, MN, MO, MS, NC, ND, NH, NJ, NM, NV, NY, OK, OR, PA, RI, SD, TX, UT, VA, VT, WA, WV
Give enrollees >120 days (MCO appeals) or >90 days (FFS appeals) to request state fair hearing	42 states and DC: AK, AR, CA, CO, CT, DE, FL, GA, HI, IL, IN, KS, KY, LA, MA, MD, ME, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OK, OR, PA, RI, SC, SD, TX, UT, VA, VT, WA, WV, WY
Suspend pre-admission screening and annual resident review (PASRR) level I and II for 30 days for long-term services and supports	47 states and DC: AK, AL, AR, AZ, CO, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MA, MD, ME, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WI, WV, WY

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¹ Kaiser Family Foundation. (2021). “Medicaid Emergency Authority Tracker: Approved State Actions to Address COVID-19.” Web.