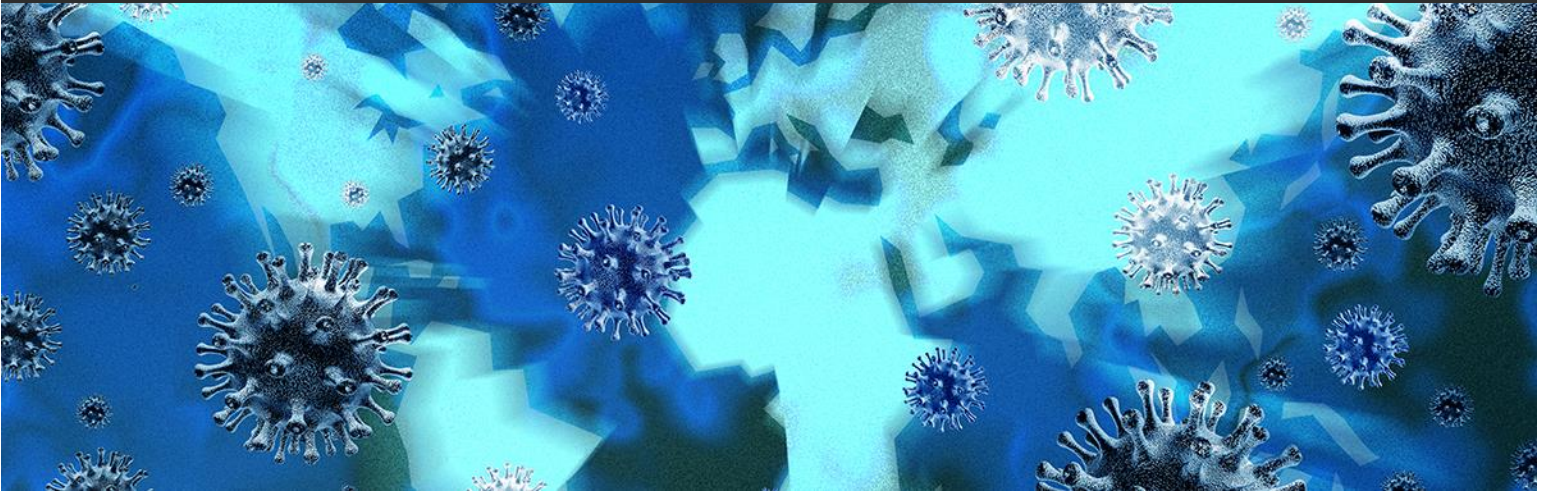


Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019



March 2020

Waivers and Flexibilities for Providers During the Coronavirus National Emergency

On March 13, 2020, President Trump declared a national emergency due to the coronavirus disease (COVID-19). This emergency declaration, under the National Emergencies Act, allows the Centers for Medicare & Medicaid Services (CMS) to temporarily waive or modify certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements. These waivers are authorized by Section 1135 of the Social Security Act (Act), and significantly impact hospitals and other health care providers. We have outlined the specific waivers below:

- **Skilled Nursing Facility (SNF) 3-Day Rule:** CMS is waiving the requirement at Section 1812(f) of the Act for a three-day prior hospitalization for coverage of a SNF stay, which will provide temporary emergency coverage of SNF services without a qualifying hospital stay, for those people who need to be transferred as a result of the effect of a disaster or emergency. This will also authorize renewed SNF coverage for beneficiaries who have recently exhausted their SNF benefits, without having to start a new benefit period.

We are preparing a separate more detailed GT Alert on the SNF waivers, which will be released shortly.

- **Home Health Quality Reporting:** CMS is extending the timeframes for home health agencies (HHAs) related to OASIS Transmission. CMS is also allowing Medicare Administrative Contractors (MACs) to extend the auto-cancellation date of Requests for Anticipated Payment (RAPs) during emergencies.

- **Critical Access Hospital (CAH) Bed Limits and Length-of-Stay:** CMS is waiving the requirements that CAHs limit the number of beds to 25, and that the length of stay be limited to 96 hours.
- **Relocation of Patients in Acute Care Unit of a Hospital:** CMS is waiving requirements to allow acute care hospitals with excluded distinct part inpatient psychiatric units that, as a result of a disaster or emergency, need to relocate inpatients from the excluded distinct part psychiatric unit to an acute care bed and unit. CMS is also waiving requirements to allow acute care hospitals with excluded distinct part inpatient Rehabilitation units that, as a result of a disaster or emergency, need to relocate inpatients from the excluded distinct part rehabilitation unit to an acute care bed and unit.

In addition, CMS is waiving requirements to allow inpatient rehabilitation facilities (IRFs) to exclude patients from the hospital's or unit's inpatient population for purposes of calculating the applicable thresholds associated with the requirements to receive payment as an IRF if an IRF admits a patient solely to respond to the emergency and the patient's medical record properly identifies the patient as such. During the applicable waiver time period, CMS will also apply the exception to facilities not yet classified as IRFs, but that are attempting to obtain classification as an IRF.

- **Length of Stay in Long-Term Care Acute Hospitals (LTCHs):** CMS will allow a LTCH 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 which allows these facilities to be paid as LTCHs.
- **Replacement of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS):** CMS is waiving replacement requirements for DMEPOS, such that the face-to-face requirement, a new physician's order, and new medical necessity documentation are not required. However, suppliers are still required to include a narrative description on the claim, indicating why the DMEPOS was lost, destroyed, irreparably damaged or otherwise rendered unusable or unavailable as a result of the emergency.
- **Licensing of Out-of-State Providers:** Applying to Medicare and Medicaid, CMS is temporarily waiving requirements that out-of-state providers be licensed in the state where they are providing services when they are licensed in another state.
- **Medicare Provider Enrollment:** CMS is waiving: (1) the application fee; (2) the criminal background checks associated with Fingerprint Based Criminal Background Checks (FCBC); and (3) site visits. CMS is also postponing all revalidation actions and expediting any pending or new applications from providers.
- **Extension of Medicare Appeals:** For fee-for-service, Medicare Advantage (MA), and Part D Medicare appeals, CMS is –
 - Providing an extension to file an appeal;
 - Waiving timeliness for requests for additional information to adjudicate the appeal;
 - Processing the appeal even with incomplete Appointment of Representation forms;
 - Processing requests for appeal that do not meet the required elements using information that is available; and
 - Utilizing all flexibilities available in the appeal process as if good cause requirements are satisfied.

For Medicaid and CHIP, states and territories may seek flexibilities through a Section 1135 waiver request. On March 13, shortly after the president's declaration, Florida became the first state to submit a Section

1135 waiver request, which requests waivers regarding: (1) provider participation; (2) prior authorization requirements; (3) pre-admission screening and annual resident review assessments; (4) providing services in alternative settings; and (5) Medicaid fair hearings and appeal deadlines. On March 16, CMS approved Florida's waiver request. While Florida is the first state to apply for this waiver authority, CMS expects more states will also submit similar requests.

Please note, CMS's response to COVID-19 continues to evolve and the information below is current only as of March 17, 2020.

Author

This GT Alert was prepared by **Nancy E. Taylor**.

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*Admitted in Maryland. Not admitted in the District of Columbia.

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