

# Aspirus Emergency System wide Policy COVID-19

## Policy on Waiver under Section 1135 of the Social Security Act in Emergency Situations

**Approved 03.17.2020 13:30**

### **Areas Affected:**

This is a system-wide policy that covers all business units of Aspirus, Inc.

### **Purpose:**

The purpose of this policy is to ensure the provision of care and treatment of patients is maintained and proper payment is preserved during a waiver of Section 1135 of the Social Security Act.

### **Policy:**

When the President declares a disaster or emergency under the Stafford Act or National Emergencies Act and the HHS Secretary declares a public health emergency under Section 319 of the Public Health Service Act, the Secretary is authorized to waive or modify certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements. This waiver is to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in Social Security Act programs in the emergency area during national emergencies under section 1135 of the Social Security Act. The 1135 waiver may temporarily exempt providers from sanctions of noncompliance who provide such services in good faith during national emergencies so they can be reimbursed (absent any determination of fraud or abuse).

Examples of these 1135 waivers or modifications include:

- 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, so long as they have equivalent licensing in another State (this waiver is for purposes of Medicare, Medicaid, and CHIP reimbursement only – state law governs whether a non-Federal provider is authorized to provide services in the state without state licensure)
- Emergency Medical Treatment and Labor Act (EMTALA) sanctions for redirection of an individual to receive a medical screening examination in an alternative location pursuant to a state emergency preparedness plan (or in the case of a public health emergency involving pandemic infectious disease, a state pandemic preparedness plan) or transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the declared emergency. A waiver of EMTALA requirements is effective only if actions under the waiver do not discriminate on the basis of a patient's source of payment or ability to pay.
- Stark self-referral sanctions
- Performance deadlines and timetables may be adjusted (but not waived).

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- Limitations on payment to permit Medicare enrollees to use out of network providers in an emergency situation

All Aspirus locations, as part of their Emergency Operations Plan, will have policies in place to address the continuity of operations in the event of a declared emergency. The plan must address the provisions of care and treatment at identified alternative sites as well as a process of how they would let the community know they are operating at a different care site.

Below is the procedure around reporting the system may need to do if we are under an approved 1135 waiver. The accountability for the procedure below will be the Finance-Administration Chief within the System Emergency Operations Center and will report for all appropriate Aspirus entities.

### **Procedure:**

Once CMS authorizes a 1135 Waiver, health care providers can request to operate under that authority by providing the following basic questions to the appropriate Statute Survey Agency and CMS Regional Office:

- Provider Name/Type
- Full Address (including county/city/town/state) CCN (Medicare provider number)
- Contact person and his or her contact information for follow-up questions should the Region need additional clarification
- Brief summary of why the waiver is needed. **For example:** CAH is sole community provider without reasonable transfer options at this point during the specified emergent event (e.g. flooding, tornado, fires, or flu outbreak). CAH needs a waiver to exceed its bed limit by X number of beds for Y days/weeks (be specific).
- Consideration – Type of relief you are seeking or regulatory requirements or regulatory reference that the requestor is seeking to be waived.

There is no specific form or format that is required to submit the information, but it is helpful to clearly state the scope of the issue and the impact. If a waiver is requested, the information should come directly from the impacted provider to the appropriate CMS Regional Office with a copy to the appropriate State Agency for Health Care Administration to make sure the waiver request does not conflict with any State requirements and all concerns are addressed timely.

In the event that the 1135 waiver is a “blanket” waiver, the provider should still notify the Statute Survey Agency and CMS Regional Office if operating under these modifications to ensure proper payment.

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Sources:

CMS 1135 Waivers

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/1135-Waivers>

1135 Waiver- A-A-Glance

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/1135-Waivers-At-A-Glance.pdf>

Requesting an 1135 Waiver

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/Requesting-an-1135-Waiver-101.pdf>

What Information to Provide for an 1135 Waiver Request

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/What-Information-to-Provide-for-an-1135-Waiver-Request.pdf>

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***Policy Reviewed and Renewed by Emergency Operations Center (EOC) 06/04/2020 16:00***

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