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Overview: 1135 Waivers focus on Long Term Care Facilities, Skilled Nursing Facilities, and/or Nursing Facilities

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Purpose of 1135 Waivers

- Sufficient health care items and services are available to meet the needs of Medicare, Medicaid and CHIP beneficiaries
- 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

Objectives

Scope

Federal Requirements only, not state licensure.

Purpose

Allow reimbursement during an emergency or disaster even if providers can't comply with certain requirements that would under normal circumstances bar Medicare, Medicaid or CHIP payment.

Duration

End no later than the termination of the emergency period, or 60 days from the date the waiver or modification is first published unless the Secretary of HHS extends the waiver by notice for additional periods of up to 60 days, up to the end of the emergency period.

What Waivers **Do Not** Provide

1135 waivers:

- Are not a grant or financial assistance program
- Do not allow reimbursement for services otherwise not covered
- Do not allow individuals to be eligible for Medicare who otherwise would not be eligible
- Should NOT impact any response decisions, such as evacuations
- Do not last forever and appropriateness may fade as time goes

Considerations for Waiver Authority

- Scope and severity of event with specific focus on health care infrastructure
- Are there unmet needs for health care providers?
- Can these unmet needs be resolved within our current regulatory authority?

To Issue Waivers



1135 Waiver Request

- Provider Name/Type
- Full Address (including county/city/town/state) CCN (Medicare provider number)
- Contact person & contact information for follow-up questions should Region need additional clarification
- Brief summary of why waiver needed
- Consideration (type of relief/regulatory requirement seeking to be waived)

1135 Waiver Review Process

- Within defined Emergency Area?
- Is there an actual need?
- What is the expected duration?
- Can this be resolved within current regulations?
- Will regulatory relief requested actually address stated need?
- Should individual or blanket waiver be considered?

Waiver Duration

- Typically end no later than the termination of the emergency period, or
- 60 days from the date the waiver, or
- Modification is first published unless the Secretary of HHS extends the waiver by notice for additional periods of up to 60 days, up to the end of the emergency period.

Expectations of Waived Providers

- **When Requested:** Provide sufficient information to justify actual need.
- **When Waived:** Will be required to keep careful records of patients to whom you provide services, in order to ensure that proper payment may be made.
- **When Normal Operations Resume:** Must resume compliance with normal rules and regulations as soon as you are able to do so.

Current Blanket Waivers for Long-Term Care Facilities and Skilled Nursing Facilities (SNFs) and/or Nursing Facilities (NFs)

Blanket Waiver Overview

- **3-Day Prior Hospitalization.** CMS is waiving the requirement for a 3-day prior hospitalization for coverage of a SNF stay.
- **Reporting Minimum Data Set.** CMS is waiving 42 CFR 483.20 to provide relief to SNFs on the timeframe requirements for Minimum Data Set assessments and transmission.
- **Staffing Data Submission.** CMS is waiving 42 CFR 483.70(q) to provide relief to long-term care facilities on the requirements for submitting staffing data through the Payroll-Based Journal system.
- **Waive Pre-Admission Screening and Annual Resident Review (PASARR).** CMS is waiving 42 CFR 483.20(k), allowing nursing homes to admit new residents who have not received Level 1 or Level 2 Preadmission Screening. Level 1 assessments may be performed post-admission.

Blanket Waiver Overview

– Physical Environment

- CMS is waiving requirements to allow for a non-SNF building to be temporarily certified and available for use by a SNF in the event there are needs for isolation processes for COVID-19 positive residents.
- CMS is also waiving requirements under 42 CFR 483.90 to temporarily allow for rooms in a long-term care facility not normally used as a resident's room, to be used to accommodate beds and residents for resident care in emergencies and situations needed to help with surge capacity.

Blanket Waiver Overview

- **Resident Groups.** CMS is waiving the requirements at 42 CFR 483.10(f)(5), which ensure residents can participate in-person in resident groups.
- **Training and Certificate of Nursing Aides.** CMS is waiving the requirements at 42 CFR 483.35(d) (with the exception of 42 CFR 483.35(d)(1)(i)), which require that a SNF and NF may not employ anyone for longer than four months unless they met the training and certification requirements under § 483.35(d).
- **Physician Visits in Skilled Nursing Facilities/Nursing Facilities.** CMS is waiving the requirement in 42 CFR 483.30 for physicians and non-physician practitioners to perform in-person visits for nursing home residents and allow visits to be conducted, as appropriate, via telehealth options.

Blanket Waiver Overview

- **Resident Roommates and Grouping.** CMS is waiving the requirements in 42 CFR 483.10(e) (5), (6), and (7) solely for the purposes of grouping or cohorting residents with respiratory illness symptoms and/or residents with a confirmed diagnosis of COVID-19, and separating them from residents who are asymptomatic or tested negative for COVID-19.

Blanket Waiver Overview

- **Resident Transfer and Discharge.** CMS is waiving requirements in 42 CFR 483.10(c)(5); 483.15(c)(3), (c)(4)(ii), (c)(5)(i) and (iv), (c)(9), and (d); and § 483.21(a)(1)(i), (a)(2)(i), and (b) (2)(i) (with some exceptions).
- CMS will allow a long term care (LTC) facility to transfer or discharge residents to another LTC facility solely for the following cohorting purposes:
 1. Transferring residents with symptoms of a respiratory infection or confirmed diagnosis of COVID-19 to another facility that agrees to accept each specific resident, and is dedicated to the care of such residents;
 2. Transferring residents without symptoms of a respiratory infection or confirmed to not have COVID-19 to another facility that agrees to accept each specific resident, and is dedicated to the care of such residents to prevent them from acquiring COVID-19; or
 3. Transferring residents without symptoms of a respiratory infection to another facility that agrees to accept each specific resident to observe for any signs or symptoms of a respiratory infection over 14 days.

Blanket Waiver Overview

Resident Transfer and Discharge Waiver Exceptions:

- These requirements are only waived in cases where the transferring facility receives confirmation that the receiving facility agrees to accept the resident to be transferred or discharged.
- In § 483.10, CMS is only waiving the requirement, under § 483.10(c)(5), that a facility provide advance notification of options relating to the transfer or discharge to another facility. Otherwise, all requirements related to § 483.10 are not waived. Similarly, in § 483.15, CMS is only waiving the requirement, under § 483.15(c)(3), (c)(4)(ii), (c)(5)(i) and (iv), and (d), for the written notice of transfer or discharge to be provided before the transfer or discharge. This notice must be provided as soon as practicable.

Blanket Waiver Overview

Resident Transfer and Discharge Waiver Exceptions cont.:

- In § 483.21, CMS is only waiving the timeframes for certain care planning requirements for residents who are transferred or discharged for the purposes previously explained.
- These requirements are also waived when transferring residents to another facility, such as a COVID-19 isolation and treatment location, with the provision of services “under arrangements,” as long as it is not inconsistent with a state’s emergency preparedness or pandemic plan, or as directed by the local or state health department.

Blanket Waiver Overview

Physician Services

- **Physician Delegation of Tasks in SNFs.** CMS is waiving the requirement in § 483.30(e)(4) that prevents a physician from delegating a task when the regulations specify that the physician must perform it personally. This waiver gives physicians the ability to delegate any tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who meets the applicable definition in 42 CFR 491.2 or, in the case of a clinical nurse specialist, is licensed as such by the State and is acting within the scope of practice laws as defined by State law.
- Any task delegated under this waiver must continue to be under the supervision of the physician. Waiver does not include the provision of § 483.30(e)(4) that prohibits a physician from delegating a task when the delegation is prohibited under State law or by the facility's own policy.

Blanket Waiver Overview

Physician Services

- **Physician Visits.** CMS is waiving the requirement at § 483.30(c)(3) that all required physician visits (not already exempted in § 483.30(c)(4) and (f)) must be made by the physician personally. CMS is modifying this provision to permit physicians to delegate any required physician visit to a nurse practitioner (NPs), physician assistant, or clinical nurse specialist who is not an employee of the facility, who is working in collaboration with a physician, and who is licensed by the State and performing within the state's scope of practice laws.
- **Note to Facilities.** CMS is not waiving the requirements for the frequency of required physician visits at § 483.30(c)(1). CMS has only modified the requirement to allow for the requirement to be met by an NP, physician assistant, or clinical nurse specialist, and via telehealth or other remote communication options, as appropriate. CMS is not waiving requirements for physician supervision in § 483.30(a)(1), and the requirement at § 483.30(d)(3) for the facility to provide or arrange for the provision of physician services 24 hours a day, in case of an emergency. It is important that the physician be available for consultation regarding a resident's care.

Blanket Waiver Overview

- **Quality Assurance and Performance Improvement (QAPI).** CMS is modifying §483.75(b)–(d) and (e)(3) to the extent necessary to narrow the scope of the QAPI program to focus on adverse events and infection control.
- **In-Service Training.** CMS is postponing the deadline for the nursing assistant to receive at least 12 hours of in-service training annually requirement throughout the COVID-19 PHE until the end of the first full quarter after the declaration of the PHE concludes.

Blanket Waiver Overview

- **Detailed Information Sharing for Discharge Planning for Long-Term Care (LTC) Facilities.** CMS is waiving the discharge planning requirement in §483.21(c)(1)(viii), which requires LTC facilities to assist residents and their representatives in selecting a post-acute care provider using data, such as standardized patient assessment data, quality measures and resource use.
- **Clinical Records.** CMS is modifying the requirement at 42 CFR §483.10(g)(2)(ii) to allow LTC facilities ten working days to provide a resident's record rather than two working days.

Blanket Waiver Overview

Physical Environment

- **Inspection, Testing & Maintenance (ITM) under the Physical Environment Conditions of Participation.** The physical environment regulations require that facilities and equipment be maintained to ensure an acceptable level of safety and quality. CMS will permit facilities to adjust scheduled inspection, testing and maintenance (ITM) frequencies and activities for facility and medical equipment.

Blanket Waiver Overview

Physical Environment

Inspection, Testing & Maintenance (ITM) under the Physical Environment Conditions of Participation. The following LSC and HCFC ITM are considered critical are not included in this waiver:

- Sprinkler system monthly electric motor-driven and weekly diesel engine driven fire pump testing.
- Portable fire extinguisher monthly inspection.
- Elevators with firefighters' emergency operations monthly testing.
- Emergency generator 30 continuous minute monthly testing and associated transfer switch monthly testing.
- Means of egress daily inspection in areas that have undergone construction, repair, alterations or additions to ensure its ability to be used instantly in case of emergency.

Blanket Waiver Overview

Physical Environment

Outside Windows. §483.90(a)(7) for SNFs/NFs require these facilities to have an outside window or outside door in every sleeping room. CMS will permit a waiver of these outside window and outside door requirements to permit these providers to utilize facility and non-facility space that is not normally used for patient care to be utilized for temporary patient care or quarantine

Summary and Helpful Resources

- Waivers provide temporary relief from certain Medicare, Medicaid, CHIP, or HIPAA requirements.
- Blanket waivers are frequently updated.
- <https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>