

Section 1135 of the Social Security Act Waiver - Nevada's Protocol

Waiver Request Process

Hospitals or Critical Access Hospitals (CAHs) seeking an Emergency Medical Treatment and Active Labor Act (EMTALA) waiver must demonstrate to the Centers for Medicare and Medicaid Services (CMS) that application of the waiver to their facility is necessary and that they have activated their disaster protocol. CMS will confirm with the State Survey Agency whether the State's preparedness plan has been activated in the area where the hospital or CAH is located. CMS will also seek to confirm when the hospital activated its disaster protocol, whether other measures may address the situation in a manner that does not require a waiver and other factors important to the ability of the hospital to demonstrate that a waiver is needed.

On October 23, 2009, President Barack Obama signed a nationwide emergency declaration as a result of the 2009-H1N1 influenza pandemic, pursuant to the National Emergencies Act. On October 27, 2009, Health and Human Services Secretary Kathleen Sebelius invoked the 1135 waiver authority. For this event, the "emergency area" is nationwide. The emergency period begins on October 23, 2009, and will last through the duration of the declared public health emergency for the 2009-H1N1 influenza pandemic.

Section 1135(b) of the Act may be tailored to match the specific situational needs during each public health emergency event. This waiver provides flexibility to the extent necessary to ensure that sufficient health care items and services are available to meet the needs of the individuals enrolled in the Medicare, Medicaid, and Children's Health Insurance Program (CHIP), and to ensure that health care providers furnishing such items and services in good faith, but who are unable to comply with one or more of the usual requirements, may be reimbursed and exempted from sanctions that might otherwise apply, absent any determination of fraud or abuse.

The waivers and modifications apply only to the extent that the provider in question has been affected by the H1N1 influenza (e.g., surge issues, staffing shortages, etc.). The Secretary has delegated to the CMS Administrator the determination in each case of the necessity for a waiver and the extent to which sufficient grounds exist for waiving such requirements with respect to a particular provider, or to a group or class of providers, or to a geographic area (other than for the Health Insurance Portability and Accountability Act [HIPAA] waivers permitted under Section 1135).

Waiver Request Documentation

Health care providers and suppliers should submit their requests to operate under the Section 1135 waiver authority, or for other relief that may be possible, to the Bureau of Health Care Quality and Compliance, with a copy to the CMS Regional IX Office in San Francisco by e-mail.

Federally certified/approved providers and suppliers must operate under normal rules and regulations unless they have sought and have been granted modifications under the 1135 waiver authority from specific requirements.

Providers and suppliers will be required to submit justification for the necessity of the waiver and include the information listed below:

- Name, telephone number, and e-mail address of requester
- CMS certification number (CCN)
- Specific Code of Federal Regulation for which the waiver is being requested
- Justification – description of the need for the waiver
- Address of the affected certified provider/supplier
- Date of Request
- Date submitted to State Agency

In addition, in order for an EMTALA waiver to apply to a specific hospital or CAH:

- The hospital or CAH must activate its disaster protocol; and supply the date and time.
- The State must have activated an emergency preparedness plan or pandemic preparedness plan in the emergency area and any redirection of individuals for a medical screening evaluation must be consistent with such plan. It is not necessary for the State to activate its plan statewide, so long as it is activated in the area where the hospital is located. It is not necessary for the State plan to identify the specific location of the alternate screening sites to which individuals will be directed, although some may do so.

Contacts

Bureau of Health Care Quality and Compliance:

mmcdade@health.nv.gov (775) 687-4475, ext. 247
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The following CMS e-mail addresses and phone numbers are provided:

Karen.Fuller@cms.hhs.gov (415) 744-3741
David.Lum@cms.hhs.gov (415) 744-3418
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Here are some website links for more information:

<http://www.cms.hhs.gov/h1n1/>
<http://www.cdc.gov/H1N1FLU>

Compliance with Nevada Laws and Regulations

An EMTALA Section 1135 waiver does not affect a hospital's or CAH's obligation to comply with State law or regulations that may separately impose requirements similar to those under EMTALA law and regulations. Facilities are encouraged to communicate with the Bureau of Health Care Quality and Compliance state licensure authorities as to the availability of waivers under State law.

Contacts

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