Don’t Waiver on Waivers – All You Need to Know about Medicare’s Recent Waiver Expansion

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AGENDA

- BPCI-A Waivers (Section 1115A)
- Emergency Waivers (Section 1135)
- Q&A
BPCI-A Waiver Examples (Section 1115A of the SSA)

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<td>• Beneficiary Incentives</td>
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& BPCI-A Waiver Compliance

• Waivers are Non-Exhaustive and at the discretion of the EI
• Criteria and justification for each waiver type needed – request waiver type first with F5
• Records need to be kept (eFusion or Beneficiary Incentive Use Record) (cost accounting)
# AGENDA

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1135 Waivers - Overview

- **Background:** temporary relaxation of criterion in a declared emergency

- **Timeline:**
  - March 13: President declares a National Public Health Emergency
  - March 16: HHS and CMS issue Section 1135 Waivers with some (not all) guidance documents on waivers and provisions
  - More guidance documents forthcoming and evolving daily

- **Claim-Level Identifiers** apply

- **Duration:** typically terminate at the earlier of 60-days or termination of the emergency. HHS Secretary has statutory authority to extend.

- Some are “**Blanket and national,**” others are “**Case-by-Case**”
1135 “Blanket” Waivers

- **Critical Access Hospitals (CAHs)** for 25-bed limit and 96-hour limit

- **Housing Acute Care Patients in Excluded Distinct Part Units**

- **Care for Excluded Inpatient Rehabilitation or Psychiatric Unit Patients in the Acute Care Unit of a Hospital**

- **Durable Medical Equipment** for F2F and Medical Necessity Orders if lost...

- **Supporting Care for Patients in Long-Term Care Acute Hospitals** to exclude patient stays affecting 25-day ALOS

- **Home Health Agencies (HHAs):** Relief regarding OASIS timeframes and for MACs to extend the auto-cancellation date of RAPs

- **Provider Locations:** Temporary waiver of the requirement that out-of-state providers be licensed in the state where they provide services when they are licensed in another state.
1135 “Case-by-Case” Waivers

- **EMTALA** for transfer of a patient not yet stabilized
- **Stark Laws** for physician referrals
- **HIPAA** for obtaining patient’s permission to speak with family, for failure to distribute notice privacy practices, for using a Smartphone or other non-secure device for discussion of PHI, etc.
1135 Waivers (Blanket) Most Applicable to BPCI-A EIs

- SNF
  - 3-day Prior Hospitalization Waiver and Spell of Illness Waiver

- Telehealth
  - Expansion of Telehealth Services
Key Takeaways

- **Key Mechanism**
  - HHS and CMS to accommodate exigencies experienced by healthcare providers in a national disaster
  - Broad spectrum potential relief

- **Consult Your Attorney, Coding Professionals, etc.**
  - Overlapping laws, MAC-specific communication, etc.
Resources

- March 13, 2020 Waiver or Modification of Requirements Under Section 1135 of the Social Security Act
- DEA Permission to Prescribe Controlled Substances via Telemedicine https://www.deadiversion.usdoj.gov/coronavirus.html
- Medicare Telehealth Frequently Asked Questions, Centers for Medicare & Medicaid Services, March 17, 2020
- Medicare Telemedicine Health Care Provider Fact Sheet, Centers for Medicare & Medicaid Services, March 17, 2020
- OIG Policy Statement Regarding Physicians and Other Practitioners That Reduce or Waive Amounts Owed by Federal Health Care Program Beneficiaries for Telehealth Services During the 2019 Novel Coronavirus (COVID-19) Outbreak, March 17, 2020
- Fusion5 COVID-19 Information Updates https://fusion5.us/covid19/