

# 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)

## BPCI Default

- ICS
- NPRA Sharing
- 3-day SNF Rule
- Post-Discharge Home Visit
- Beneficiary Incentives



## Care Modalities

- Non-Medical Caregiver
- Assisted Living
- Virtual Physical Therapy Services



## Equipment & Tech

- No-Cost or rental DME
- Remote patient monitoring devices
- Virtual Visits



## Indirect Services

- Transportation support for appointments
- Animal Boarding
- Snow Removal
- Hotel Accommodations for beneficiaries with long-distance travel needs



## & 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

BPCI-A Waivers (Section 1115A)



Emergency Waivers (Section 1135)

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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.



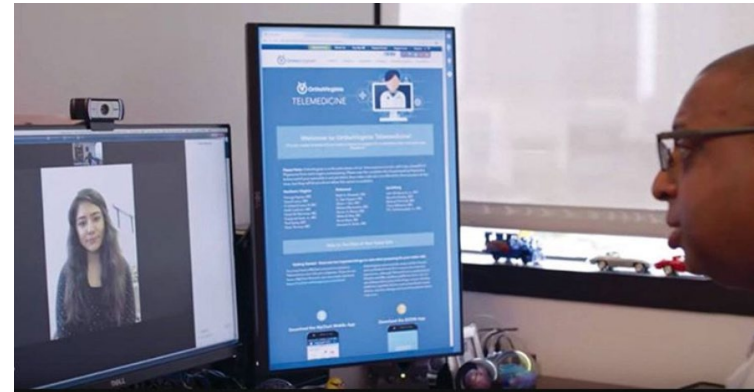
# 1135 Waivers (Blanket) Most Applicable to BPCI-A EIs

- **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 <https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx>
- CMS COVID-19 Emergency Declaration Health Care Providers Fact Sheet <https://www.cms.gov/files/document/covid19-emergency-declaration-health-care-providers-fact-sheet.pdf>
- Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 <https://www.congress.gov/bill/116th-congress/house-bill/6074/text>
- Main CMS Emergency Page <https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page>
- Medicaid COVID-19 FAQs <https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf>
- DEA Permission to Prescribe Controlled Substances via Telemedicine <https://www.deadiversion.usdoj.gov/coronavirus.html>
- CMS FAQs on Survey Suspension <https://www.cms.gov/files/document/covid19survey-activity-suspension-faqs.pdf>
- CMS Guidance for Infection Control and Prevention of COVID-19 in Nursing Homes <https://www.cms.gov/files/document/3-13-2020-nursing-home-guidance-covid-19.pdf>
- Medicare Telehealth Frequently Asked Questions, Centers for Medicare & Medicaid Services, March 17, 2020 <https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>
- Medicare Telemedicine Health Care Provider Fact Sheet, Centers for Medicare & Medicaid Services, March 17, 2020 <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>
- 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 <https://oig.hhs.gov/fraud/docs/alertsandbulletins/2020/policy-telehealth-2020.pdf>
- Notification of Enforcement Discretion For Telehealth Remote Communications During The COVID-19 Nationwide Public Health Emergency, U.S. Department Of Health & Human Services, March 17, 2020 <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>
- Fusion5 COVID-19 Information Updates <https://fusion5.us/covid19/>



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