

COVID-19 emergency declaration blanket waivers for healthcare providers



The following CMS waivers affect hospital and physician health information management (HIM) operations and documentation requirements.

Verbal orders

CMS is waiving the requirements of 42 CFR §482.23, §482.24, and §485.635(d)(3) to provide additional flexibility related to verbal orders where read-back verification is required, but authentication may occur later than 48 hours. This relaxation of verbal order requirements will allow more efficient treatment of patients in surge situations.

Specifically, the following requirements are waived:

- §482.23(c)(3)(i) – If verbal orders are used for the use of drugs and biologicals (except immunizations), they are to be used infrequently.
- §482.24(c)(2) – All orders, including verbal orders, must be dated, timed, and authenticated promptly by the ordering practitioner or by another practitioner who is responsible for the care of the patient.
- §482.24(c)(3) – Hospitals may use pre-printed and electronic standing orders, order sets, and protocols for patient orders.

This includes all subparts of §482.24(c)(3).

- §485.635(d)(3) – Although the regulation requires that medication administration be based on a written, signed order, this does not preclude the Critical Access Hospital(s) from using verbal orders. A practitioner responsible for the care of the patient must authenticate the order in writing as soon as possible after the fact.

Medical staff

To address workforce concerns related to COVID-19, CMS is waiving requirements under 42 CFR §482.22(a)(1)-(4) to allow for physicians whose privileges will expire to continue practicing at the hospital and for new physicians to practice before full medical staff/governing body review and approval.

- CMS is waiving §482.22(a)(1)-(4) regarding details of the credentialing and privileging process.
- Please also refer to the “Practitioner locations” information below.

Practitioner locations

CMS is temporarily waiving requirements that out-of-state, licensed practitioners be licensed in the state where they are providing services. **CMS will waive the physician or non-physician practitioner licensing requirements when the following four conditions are met:**

- Practitioner must be enrolled as such in the Medicare program;
- Practitioner must possess a valid license to practice in the state that relates to his or her Medicare enrollment;
- Practitioner is furnishing services – whether in person or via telehealth – in a state in which the emergency is occurring in order to contribute to relief efforts in his or her professional capacity; and
- Practitioner is not affirmatively excluded from practice in any state that is part of the 1135 emergency area.

Note that state licensure requirements remain in effect.

In addition to the statutory limitations that apply to 1135-based licensure waivers, **an 1135 waiver, when granted by CMS, does not have the effect of waiving state or local licensure requirements or any requirement specified by a state or local government as a condition for waiving its licensure requirements.**

Those requirements continue to apply unless waived by the state. Therefore, in order for physician or non-physician practitioners to avail themselves of the 1135 waiver under the conditions described above, **the state also would have to waive its licensure requirements, either individually or categorically, for the type of practice for which the practitioners are licensed in their home states.**

Medical records

CMS is waiving requirements under 42 CFR §482.24(a) through (c), which cover the subjects of the organization and staffing of the medical records department, requirements for the form and content of the medical record, and record retention requirements. These flexibilities may be implemented so long as they are consistent with a state's emergency preparedness or pandemic plan.

CMS also is waiving §482.24(c)(4)(viii), related to medical records to allow flexibility in completion of medical records within 30 days following discharge from a hospital. This flexibility will allow clinicians to focus on bedside patient care during the pandemic.

Patient rights

CMS is waiving requirements under 42 CFR §482.13 **only for hospitals that are considered to be impacted by a widespread outbreak of COVID-19**. Hospitals located in a state that has widespread confirmed cases (i.e., 51 or more confirmed cases) — as updated on the CDC States Reporting Cases of COVID-19 website — **would not be required to meet the following requirements:**

- §482.13(d)(2) – With respect to timeframes in providing a copy of a medical record.
- §482.13(h) – Related to patient visitation, including the requirement to have written policies and procedures on visitation of patients who are in COVID-19 isolation and quarantine processes.
- §482.13(e)(1)(ii) – Regarding seclusion.

The waiver flexibility is based on the number of confirmed cases as reported by CDC and will be assessed accordingly when COVID-19 confirmed cases decrease. Review at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

Provider enrollment

Non-waiver CMS action: Each Medicare Administrative Contractor has published a toll-free hotline number on its website for its physicians and non-physician practitioners and Part A-certified providers and suppliers establishing isolation facilities to enroll and receive temporary Medicare billing privileges. In terms of provider enrollment issues, CMS's actions mean:

- Application fees are waived (to the extent applicable)
- Criminal background checks associated with fingerprint-based criminal background checks (FCBC) are waived (to the extent applicable) – 42 CFR §424.518
- Site visits are waived (to the extent applicable) – 42 CFR §424.517
- Revalidation actions are postponed
- Licensed providers may render services outside of their state of enrollment
- Any pending or new applications from providers are being expedited
- Physicians and other practitioners may render telehealth services from their home without reporting their home address on their Medicare enrollment while continuing to bill from their currently enrolled location
- Opted-out physicians and non-physician practitioners may terminate their opt-out status early and enroll in Medicare to provide care to more patients

Complete CMS waiver guidance can be found at <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>.

Questions? Please contact us today.

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