

Additional Flexibilities

In addition to the waivers granted by CMS to DOM under Section 1135 of the Social Security Act on March 23, 2020, CMS and HHS has issued guidance that largely grants the rest of DOM's 1135 waiver requests. Each of these flexibilities are explained below.

Emergency Medical Treatment and Labor Act (EMTALA): We respectfully request a blanket waiver for sanctions under 1867 of the Act for the direction or relocation of an individual to another location to receive medical screening in an alternate location pursuant to an appropriate State of Mississippi emergency preparedness plan and/or State of Mississippi pandemic preparedness plan.

- Authority for flexibility: From the 3/13/2020 HHS Waiver
 - Sanctions under section 1867 of the Act (the Emergency Medical Treatment and Labor Act, or EMTALA) for the direction or relocation of an individual to another location to receive medical screening pursuant to an appropriate state emergency preparedness plan or for the transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the declared Federal public health emergency for the COVID-19 pandemic.
- Relevant Link:
<https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx>

Critical Access Hospitals: We respectfully request a blanket waiver to allow a critical access hospital to operate beyond the 25-bed limit, the hospital has the capacity, and waiver of the 95 hour length-of-stay requirement.

- Authority for flexibility: CMS issued guidance on 3/13/20 waiving certain provider requirements due to the President's National Disaster Declaration
- Relevant Link:
<https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx>

HIPAA Regulations: We respectfully request a blanket waiver of sanctions and penalties arising from noncompliance with certain HIPAA regulations, including:

1. Obtaining a patient's agreement to speak with family or friends,
 2. Honoring a patient's request to opt out of the facility directory,
 3. Distributing a notice of privacy practices, or
 4. The patient's right to request confidential communications.
- Authority for flexibility: From the 3/13/2020 HHS Waiver
 - Pursuant to Section 1135(b)(7) of the Act, I hereby waive sanctions and penalties arising from noncompliance with the following provisions of the HIPAA privacy regulations: (a) the requirements to obtain a patient's agreement to speak with family members or friends or to honor a patient's request to opt out of the facility directory (as set forth in 45 C.F.R. § 164.510); (b) the requirement to distribute a notice of privacy practices (as set forth in 45 C.F.R. § 164.520); and (c) the patient's right to request privacy restrictions

or confidential communications (as set forth in 45 C.F.R. § 164.522); but in each case, only with respect to hospitals in the designated geographic area that have hospital disaster protocols in operation during the time the waiver is in effect.

- Relevant Link:
<https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx>

Telehealth Security Requirements/HIPAA: We respectfully request waiver of HIPAA Security Requirements for transmission of telehealth services. Many facilities are not prepared with secure platforms that they own and control that are also accessible to the patient. The request is to allow provider to use readily available platforms like Facetime, WhatsApp, Skype, etc. to facilitate the telehealth visit with the patient at home. Any providers wishing to continue telehealth treatment after the emergency period would have to acquire HIPAA-compliant telehealth technology and ensure that the beneficiary has the same at that time.

- Authority for flexibility: The Office of Civil Rights with the U.S. Department of Health and Human Services is waiving enforcement of HIPAA-related sanctions for use of non-HIPAA compliant software for delivery of services.
- Relevant Links:
 - <https://www.hhs.gov/about/news/2020/03/17/ocr-announces-notification-of-enforcement-discretion-for-telehealth-remote-communications-during-the-covid-19.html>
 - <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>