



COVID-19 Federal and State Regulatory Waivers

Compliance Considerations

May 8, 2020

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Agenda

- Sources of Regulatory Waivers
- Key Federal Blanket Waivers under Section 1135 of the Social Security Act (SSA)
- Key New York Waivers
- Compliance Program Considerations

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Sources of Authority for Regulatory Waivers

- SSA Section 1135
 - Waiver of Medicare, Medicaid and CHIP requirements in declared emergencies in statutorily prescribed areas of health care law (*e.g.*, conditions of participation, Stark Law)
- SSA Section 1915(c), Appendix K
 - Relaxation of Medicaid home and community-based service requirements and creation of new funding streams
- SSA Section 1115
 - New Medicaid research and demonstration services or waiver of requirements under existing 1115 waivers
- Disaster Medicaid State Plan Amendments
 - Medicaid coverage and service expansions, including relaxation of certain documentation or other billing requirements

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Key COVID-19 Section 1135 Blanket Waivers

- **Telehealth/HIPAA**
 - Originating site and existing relationship requirements
 - Expansion of eligible practitioners (*e.g.*, PT/OT/ST)
 - OCR enforcement discretion
- **Medical Recordkeeping**
 - Relaxation of hospital condition of participation requirements pertaining to medical records

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Key COVID-19 Section 1135 Blanket Waivers

- **Stark Law**
 - Waiver of writing and signature requirements
 - Waiver of FMV requirement for personal services exception
 - Below-FMV office/equipment leases allowed

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New York Section 1135 Waiver – Key Elements

- *Prior Authorization*
 - Suspends fee-for-service (FFS) prior authorization requirements
 - Requires FFS providers to extend pre-existing authorizations
- *Provider Enrollment*
 - Waives certain screening requirements
 - Permits out-of-state providers with equivalent licensing
 - Postpones deadlines for revalidation of providers
- *Medicaid Appeals and Fair Hearings – Modified Timelines*

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New York Executive Order Highlights

- As of May 7, Governor Cuomo had issued 28 Executive Orders in response to COVID-19
- **Noteworthy Orders:**
 - Hospital, nursing facility and laboratory recordkeeping requirements to the extent necessary to respond to the outbreak
 - Various licensure and scope of practice requirements
 - Immunity from civil liability for certain licensed practitioners

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Noteworthy Department of Health Waivers

- Suspension of new Statements of Deficiency and Statements of Finding for MCOs
- Suspension of Medicaid managed care re-assessments and six-month in-person care management home visit requirements
- Elimination of most face-to-face billing requirements
- Voluntary Plan of Care Modifications for MCO members
- Billing for Telephonic Telehealth (FFS and MCO)

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Compliance Programs

Key Questions:

- *How should compliance programs adapt to relaxed regulatory requirements?*
- *As the public health emergency abates, how should providers think about auditing for compliance?*

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Relevant Compliance Program Elements

- Compliance Officer, working with in-house and outside counsel
- Policies and Procedures
- Training and Education
- Coordination with regulators
- Monitoring during, and auditing after, the public health emergency

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Thank you

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