



## Alaska's Emergency Declarations and 1135 Waiver

### Overview:

When the President of the United States declares an emergency and the Health and Human Services Secretary declares a public health emergency under Section 319 of the Public Health Service Act, an 1135 waiver can take effect to help facilities by providing more flexibility in the rules governing health care services during an emergency situation or a natural disaster. The following designations have been enacted since the Nov. 30, 2018 Southcentral Alaska earthquake:

**Federal Emergency Declaration:** The President signed an [emergency declaration for Alaska](#) on Nov. 30, 2018. This action authorizes FEMA to coordinate all disaster relief efforts to alleviate the hardship and suffering caused by the emergency on the local population and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act. This designation applies to the Municipality of Anchorage, the Kenai Peninsula Borough and the Matanuska-Susitna Borough.

**Public Health Emergency:** U.S. Health and Human Services Secretary Alex Azar [declared a public health emergency in Alaska](#) on Dec. 3, 2018 following the President's emergency declaration for Alaska. This declaration triggers other legal authorities that give the HHS [Centers for Medicare & Medicaid Services](#) (CMS) beneficiaries, their healthcare providers and suppliers greater flexibility in meeting emergency health needs in the aftermath of the earthquake. With the declaration in place, CMS can use legal authority provided under the Social Security Act [Section 1135](#) to grant waivers that will aid healthcare facilities in providing uninterrupted care and services for the elderly and people with disabilities living in long-term care facilities. The waivers also support the Alaska Medicaid Agency's administrative processes, ensuring that Medicaid funds continue to flow despite the temporary closure of the agency's offices.

**1135 Waiver:** CMS used its legal authority immediately following the Public Health Emergency declaration to provide an 1135 waiver to the state of Alaska. These waivers under section 1135 of the Social Security Act typically end no later than the termination of the emergency period, or 60 days from the date the waiver or modification is first published unless the Secretary of HHS extends the waiver by

notice for additional periods of up to 60 days, up to the end of the emergency period. Following are some examples of how this will help Alaska following the Nov. 30 Southcentral earthquake:

- The 1135 waiver allows the state to ensure that sufficient health care items and services are available to meet the needs of individuals. Under this authority, requests for authorizations to admit an individual into a nursing home may be eligible for expedited processing through the Divisions of Senior and Disabilities Services Director's office.
- The Division of Senior and Disabilities Services has federal reporting requirements related to our home and community based waivers, called the 372 report. These reports are due Dec. 30, 2018. Because of displaced staff and requirement to allocate resources to maintaining services the Division will use the 1135 waiver to request an extension for 372 reporting.
- Alaska Medicaid Provider Enrollment Disaster Relief: The 1135 waiver allows for an expedited process to enroll new providers into Alaska's Medicaid program by waiving the application payment fee, criminal background checks for providers, site visits and state licensure requirements. If a medical provider is outside of Alaska, then under the 1135 waiver providers must have a National Provider ID (NPI), must be enrolled in Medicare or another state's Medicaid program. This is valid 180 days. This is an important in an emergency situation when Alaskans may need to travel outside of Alaska for care.
- The HIPAA Privacy Rule is not suspended during a public health or other emergency; however, the Secretary of HHS may waive certain provisions of the Privacy Rule under the Project Bioshield Act of 2004 (PL 108-276) and section 1135(b)(7) of the Social Security Act. If the President declares an emergency or disaster and the Secretary declares a public health emergency, the Secretary may waive sanctions and penalties against a covered hospital that does not comply with the following provisions of the HIPAA Privacy Rule:
  - **The requirement to obtain a patient's agreement to speak with family members or friends involved in the patient's care:** A hospital no longer has to obtain the consent of an individual to inform relatives or friends involved with the care of that individual of PHI related to the care or payment for care, or of the individual's location, general condition, or death. This includes notifying an organization like the Red Cross so it can find and notify the relatives or friends.
  - **The requirement to honor a request to opt out of the facility directory:** An individual may request that some or all of his or her information be excluded from a hospital's directory. This allows a hospital to ignore that request.
  - **The requirement to distribute a notice of privacy practices:** An individual is normally entitled to a notice of the uses and disclosures of PHI that a facility might undertake, of the individual's rights, and of the entity's duties with respect to that. A hospital can forego providing this notice under the federal waiver.
  - **The patient's right to request privacy restrictions:** Normally a patient may request a restriction on the uses and disclosures of the patient's PHI. An entity is not required to honor that request. In this case, the waiver only appears to be about permitting the *request* of the restriction. A hospital does not need to give the individual the chance to make that request.

- **The patient's right to request privacy restrictions:** Normally a patient may request a restriction on the uses and disclosures of the patient's PHI. An entity is not required to honor that request. In this case, the waiver only appears to be about permitting the *request* of the restriction. A hospital does not need to give the individual the chance to make that request.
- **The patient's right to request confidential communications:** An individual is entitled to ask that PHI be communicated to him or her by an alternate means of communication, to preserve confidentiality. Here, the waiver gives a hospital the permission to not allow an individual to make that request.

In addition, the disaster declarations gives the Alaska Department of Health and Social Services cause to ask for an extension of the open enrollment deadline for Medicare. Senior and Disabilities Services [Medicare Information Office](#) (MIO) staff have been displaced from their office since the earthquake. It is the responsibility of the MIO to assist seniors through the [Medicare Open Enrollment](#) process. Open enrollment for Medicare ends on Dec. 7, 2018. Due to the earthquake timing, lack of access to the workplace and known increase in Medicare Beneficiaries (Last year the Medicare Beneficiaries in Alaska increased by 8,186, 9.1%) the division has requested an extension to the open enrollment period for the State of Alaska. CMS is putting together the guidance for the state and will be sending that information to SDS Division Director Wednesday Dec. 5, 2018. Visit [1135 Waivers](#) for more information.