



*State of New Jersey*  
**DEPARTMENT OF HEALTH**  
PO BOX 367  
TRENTON, N.J. 08625-0367  
[www.nj.gov/health](http://www.nj.gov/health)

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

JUDITH M. PERSICHILLI, RN, BSN, MA  
*Commissioner*

March 16, 2020

Ms. Lauren D. Reinertsen, M.P.A., Ph.D.  
Associate Regional Administrator  
Northeast Division, Survey and Certification  
Centers for Medicare and Medicaid Services  
26 Federal Plaza, Room 37-130  
New York, NY 10278

Re: State Request for 1135 Waiver  
Authorization

Dear Ms. Reinertsen:

In response to the impact of COVID- 19 on our health system, hospital, post-acute, and community based providers, the Department of Health of the State of New Jersey is requesting relief for multiple certified health care providers from several conditions of participation.

The President declared a State of Emergency and the HHS Secretary declared a Public Health Emergency on March 13, 2020 which allows for CMS programmatic waivers based on Section 1135 of the Social Security Act. CMS has posted information that includes flexibilities, blanket waivers, waivers with 1135 authority and waivers without 1135 authority.

Under Section 1135 waiver authority we respectfully request the following additional waivers and program flexibilities.

**1. Provider participation, billing requirements, and conditions for payment.**

NJ DOH respectfully requests a waiver/flexibility to allow evacuating facilities to receive payments for services provided to affected beneficiaries in alternative physical settings, such as temporary shelters or other care facilities.

## **2. Waiver of Conditions of Participation and Certification**

NJ DOH respectfully requests a blanket waiver be issued allowing certain conditions of participation, certification requirements, program participation or similar requirements for individual health care providers or types of health care providers, a hospital or provider of services, a health care facility, or a supplier of health care items or services relating to space and physical plant requirements for the period following the onset of COVID-19 to allow for stabilization, assessment, and permanent relocation of patients and residents.

## **3. MDS and OASIS**

NJ DOH acknowledges that CMS has already provided a waiver to the MDS requirements and respectfully requests a blanket waiver be issued for timeframe requirements for OASIS assessments and transmission. The state or impacted provider would still forward provider information and waiver requests to the CMS RO for tracking purposes.

## **4. CMS-13 Requirements; IRF Pre-Admission; Three-Hour Rule**

a. NJ DOH respectfully requests a blanket waiver be issued allowing inpatient rehabilitation hospitals the ability to treat medical/surgical and skilled nursing patients during the emergency period until appropriate relocation can occur. The IRFI would be exempted from the requirements of CMS-13 which requires 60 percent of the patients treated at a facility paid under the IRF prospective payment system is treated for one of 13 specified conditions.

b. Further, we request a waiver of the IRF pre-admission requirements so that acute care patients can be relocated to an IRF to create capacity in the general acute care hospital. In addition, we request a waiver of the three-hour rule for patients who are relocated from the acute care hospital to create capacity for new patients in acute care.

## **5. EMTALA Waiver**

NJ DOH respectfully requests a blanket waiver be issued for sanctions under Section 1867 of 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 the transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstance of COVID-19. Waiver of actions under EMTALA rules (per § 1867 of the Act) regarding the transfer of an individual who has not been stabilized (if the transfer arises out of the circumstances of the emergency) and the direction or relocation of an individual to receive medical screening at an alternative location in accordance with preparedness plans.



**6. PACE Waivers**

NJ DOH respectfully requests a waiver of the timeframe for the semi-annual reassessment and of the requirement that assessments occur only in person when there is a change in participant status. In addition, NJ DOH requests a waiver of contracting requirements so that PACE organizations can use out-of-network providers to address the service needs of participants if necessary.

**7. Paid Feeding Assistant Waiver**

NJ DOH respectfully requests a waiver of the requirements for training of paid feeding assistants in skilled nursing facilities to allow SNFs to meet the dining needs of residents who are no longer able to have communal dining under CMS guidance. Instead, SNFs will provide “just in time” training related to residents’ plans of care for staff who will assist with feeding. Compliance with CMS’ prohibition on using feeding assistants for complex residents will continue.

**8. Nursing Assistants and Home Health Aides**

NJ DOH respectfully requests a waiver to allow certified nursing assistants and certified home health aides to work in either a SNF or HHA. Further, we request a waiver of the limitations on the work that nursing assistant and home health aides who are still in training are permitted to do.

**9. Discharge Planning**

NJ DOH respectfully requests a waiver of the acute care, skilled nursing facility, home health agency regulations concerning providing data and honoring preferences related to the placement of a patient when discharge is appropriate and necessary to create capacity to care for new patients.

**10. Face to Face Requirement for Home Health and Hospice**

NJ DOH respectfully requests a waiver of the home health and hospice face-to-face encounter requirements.

**11. Long Term Care Hospital PPS Requirements; 25-day ALOS**

NJ DOH respectfully requests a waiver of the 3-day stay in an ICU for patients who are relocated from an acute care hospital to create capacity at the acute care hospital and to permit the LTCH to receive a full LTCH PPS payment for such patients. Further, we request a waiver of the 25-day average length of stay requirement for patients relocated to an LTCH from acute care to create capacity for new patients in the general acute care hospital.

**12. PASRR**

NJ DOH respectfully requests a blanket waiver of PASRR requirements.

**13. Professional Licensure Requirements**

NJ DOH respectfully requests a waiver of requirements that physicians, nurses and other licensed and certified health care professionals be licensed in the state in which they are providing services so long as they have an equivalent license or certification in another state.

**14. Hospital and Post-Acute Data Reporting**

NJ DOH respectfully requests a waiver of CMS hospital, skilled nursing facility, home health agency, long term acute care hospital, inpatient rehabilitation facility data reporting requirements for NHSN, NDNQI, and QRP programs.

**15. USP 800 related to hazardous drug preparation.**

NJDOH respectfully requests a waiver for compliance with these requirements so that negative pressure rooms currently used for this purpose can be freed up to care for patients.

**16. Stark Requirements**

NJ DOH respectfully requests a waiver of sanctions for violations of Stark rules (physician self-referral under § 1877 of the Act).

**17. Accreditation and Survey Activities**

NJ DOH respectfully requests suspension of deadlines and timetables for performance of required activities, including but not limited to suspension of accreditation surveys such as but not limited to CMS surveys and surveys provided under deemed status except those involving immediate jeopardy, abuse, neglect, infection prevention and control during time of declared emergency and for 30 days post rescinding emergency declaration.

**18. Medicare Advantage**

NJDOH respectfully requests a waiver on limitations on the ability of Medicare Advantage plans to make direct payments to providers for services provided to Medicare Advantage enrollees.



**19. HIPAA**

NJ DOH respectfully requests a waiver on sanctions and penalties for noncompliance with certain patient privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). NJDOH respectfully requests a waiver to allow telehealth platforms and methods that are not HIPAA compliant to be used to monitor, assess and address patient needs.

**20. Skilled Nursing Facility 3-day Stay Requirement**

NJ DOH respectfully requests a blanket waiver of the requirement at Section 1812(f) of the Social Security Act for a 3-day prior hospitalization for coverage of a skilled nursing facility stay. In addition, we request that for beneficiaries who recently exhausted their SNF benefits, that renewed SNF coverage be authorized without the beneficiary having to start a new benefit period.

**21. QIN-QIO Scope of Work**

NJ DOH respectfully requests that CMS halt all recruitment and enrollment activities related to the QIN-QIO 12th scope of work and delay deadlines until at least 180 days following the end of the public health emergency.

**22. Suicidal Patients**

NJ DOH respectfully requests a waiver of standards that require 1:1 observation for patients who state they are suicidal. This is a significant staffing burden and definitely will not be feasible in the near future. We recommend allowing video monitoring and cohorting of patients, where possible, in this circumstance and having just one staff person physically present in the room with the cohort.

I thank you for your consideration of this request.

Sincerely,



Judith M. Persichilli, RN, BSN, MA  
Commissioner