



Health Facility Licensing and Certification

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§1135 Waivers for Oregon Wildfires 2020: Health and Safety Compliance

Background: Health care facilities continue to respond to the challenge of the COVID-19 pandemic and now face a new challenge in the Oregon wildfires. This memo provides information on the applicability of §1135 waivers to hospitals impacted by wildfires.

Who: This memo describes the application of Centers for Medicare & Medicaid Services (CMS) §1135 waiver regulatory flexibilities to hospitals in the areas covered by the federal wildfire emergency declaration. There are §1135 waiver flexibilities for all CMS certified non-long-term care facilities including Hospitals, Ambulatory Surgery Centers, End-Stage Renal Disease treatment facilities, Home Health Agencies, Hospices, Rural Health Clinics, and Federally Qualified Health Centers. Long-term care facilities (including Skilled Nursing Facilities) should contact the [DHS Safety, Oversight and Quality Unit](#) for information about §1135 waivers for those facilities.

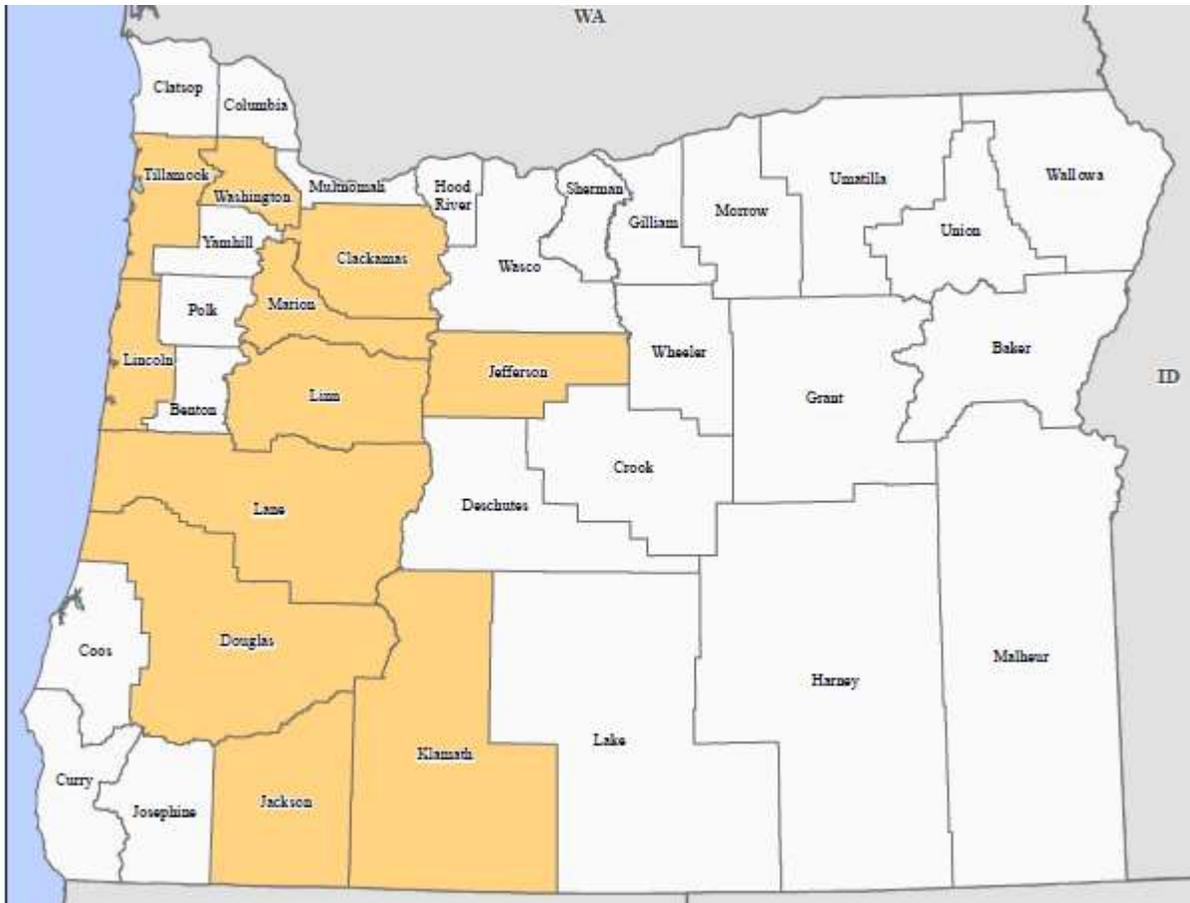
What: Facilities in counties covered by the federal wildfire disaster declarations that have implemented their facility disaster plan may operate using the following flexibilities to address wildfire impacts:

1. The [COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers](#) (COVID-19 nationwide §1135 blanket waivers). Waiver provisions permit specific flexibilities related to:
 - a. Physical Environment including use of additional on- and off-campus non-hospital buildings if safety and comfort of patients and staff are sufficiently addressed
 - b. CAH
 - i. Status
 - ii. Location
 - iii. Length of Stay
 - iv. Personnel Qualifications
 - v. Staff Licensure
 - vi. Physician Responsibilities
 - c. Temporary Expansion of Locations including waiver of written policies & procedures for emergencies at surge facilities and waiver of Emergency Preparedness policies & procedures for surge facilities

- d. Housing Acute Care Patients in IPPS Units & Housing IPPS Patient in Acute Care Units
 - e. Sterile Compounding – Reusing PPE
 - f. Medical Staff – Privileging expirations and new staff
 - g. Physician Services – Requirement that Medicare patients be under the care of a physician and permitting other practitioners as state EP allows
 - h. Anesthesia Services – CRNA supervision is at discretion of the hospital and in accordance with state law
 - i. Nursing Services – related to nursing care plans, outpatient department staffing and prioritization of inpatients
 - j. Respiratory Care Services
 - k. Practitioner location while providing services
 - l. EMTALA provisions allowing Medical Screening Examinations to be provided at additional on-campus locations and the applicability of EMTALA at off-campus locations
 - m. Verbal orders
 - n. Reporting requirements for ICU deaths involving restraints
 - o. Patient Rights related to seclusion in psychiatric units, the timeframe for providing medical records and visitation
 - p. Detailed information for discharge planning
 - q. Medical Records
 - r. Telemedicine
 - s. Providing information regarding Advance Directive policies
 - t. Utilization Review
 - u. Quality Assessment and Performance Improvement Program
 - v. Food and Dietetic Services
 - w. Expanded Ability to Offer Swing Beds
2. Hospitals may use the following additional flexibility in treating patients under the Emergency Medical Treatment and Labor Act (EMTALA):
- a. Directing or relocating patients to another location to receive a Medical Screening Examination pursuant to an appropriate state emergency preparedness plan; or
 - b. For the transfer of an individual who has not been stabilized if that transfer is necessitated by the circumstances of the declared federal public health emergency for the wildfires.

These waivers **DO NOT** require a request to be sent to the 1135waiver@cms.hhs.gov mailbox or that notification be made to any of the CMS's regional offices. Waivers **are not effective** with respect to any action under the waiver that discriminates among individuals on the basis of their source of payment or ability to pay.

Where: The additional flexibilities apply to facilities impacted by wildfires only in the geographic area covered by the president's declaration on September 10, 2020. This map for this declaration is available at https://gis.fema.gov/maps/em_3542.pdf.



When: The wildfire waiver flexibilities are retroactive to September 8, 2020. Some waiver provisions are in effect for 72-hours from implementation of the facility disaster plan. All §1135 waiver flexibilities end upon expiration of the president’s emergency declaration, the Secretary of Health and Human Services’ emergency declaration. §1135 waivers automatically expire after 60 days unless extended by extension of the emergency declarations.

For more information on Oregon wildfires visit [OHA’s Wildfires and Smoke page](#).

Questions: please email mailbox.hclc@state.or.us

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