



March 19, 2020

COVID-19 National Emergency Declaration

COMMITTEE ON ENERGY & COMMERCE

With cases of a novel coronavirus (COVID-19) continuing to spread across the United States, the short- and long-term repercussions of this global pandemic remain unknown. All 50 states now have confirmed cases, and the nationwide death toll has surpassed 100. These factors, combined with the disease's unmistakable virality and continued pressure from public health officials, have caused the Trump Administration to take action.

Declaration of a National Emergency

- On [January 31, 2020, Health and Human Services \(HHS\) Secretary Azar declared a public health emergency](#), pursuant to the Public Health Service Act Section 319. This declaration allowed HHS and other jurisdictional health departments more flexibility to reassign personnel to respond to COVID-19.
- [On March 13, 2020, President Trump declared a national emergency related to COVID-19](#). The declaration of a national emergency invokes the Stafford Act and determines the legal and operational resources available to respond to an emergency, such as the outbreak of COVID-19, by increasing federal officials' powers to respond to and assist states and localities through emergency protective measures undertaken to reduce an immediate threat to life.
- [Only two national emergency declarations through the Stafford Act have targeted disease outbreaks, both made by President Clinton in 2000 for New York and New Jersey to address the threat of the West Nile virus](#).
- By invoking the Stafford Act, the Federal Emergency Management Agency (FEMA) will be able to utilize the [\\$43.6 billion currently available](#) in the Disaster Relief Fund (DRF) to assist state and local governments in their efforts to mitigate the spread of COVID-19 and protect public health.

FEMA's Disaster Relief Fund (DRF)

- [The DRF is the primary source of funding for the federal government's general disaster relief program](#). Under FEMA's administration, the DRF funds three relevant types of activities for the COVID-19 outbreak.
 - First are pre-declaration surge activities, such as deploying response teams and prepositioning equipment.
 - Second, the DRF funds Disaster Readiness and Support (DRS) activities, which include all ongoing, non-incident specific FEMA actions.
 - Third, the DRF also funds Disaster Declaration activities. While a Disaster Declaration must be requested by a governor, and if granted, would allow FEMA to provide emergency

protective measures to the state at a 75 percent federal to 25 percent state share for eligible expenses and activities.

- According to [FEMA's Public Assistance Program and Policy Guide v3.1](#), these eligible expenses include: medically necessary tests and diagnostics; treatment, stabilization, and monitoring; a one-time 30-day supply of prescriptions for acute conditions or to replace maintenance prescriptions; vaccinations for survivors and emergency workers to prevent outbreaks of infectious and communicable diseases; durable medical equipment; consumable medical supplies; temporary facilities, such as tents or portable buildings for treatment of survivors; leased or purchased equipment for use in temporary medical care facilities; security for temporary medical care facilities; use of ambulances for distributing immunization and setting up mobile medical units and dissemination of information to the public to provide warnings and guidance about health and safety hazards.
- These funds will be used in tandem with the funds made available through the passage of [H.R. 6074](#), the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 and, [H.R. 6201](#), the Families First Coronavirus Response Act.

Section 1135 Waivers

- Once a national emergency has been declared, the HHS Secretary can also [invoke Section 1135 of the Social Security Act](#). This allows for the approval of 1135 waivers from states, individual health care providers, or regional and field HHS and Centers for Medicare and Medicaid Services (CMS) offices, which waive or modifies certain requirements to ensure there are sufficient health care items and services available to meet the needs of individuals enrolled in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) in the midst of the national emergency period.
- For example, 1135 waivers may include waivers for conditions of participation in the Medicare and Medicaid program, and state licensure requirements if a provider has licensure in another state. These waivers may cover, for example, setting up hospital facilities in alternative settings that would not normally be approved for a hospital participating in Medicare. It also allows health care providers to be reimbursed and exempted from certain sanctions related to the enforcement of the Emergency Medical Treatment and Labor Act (EMTALA) and anti-kickback laws.
- Under 1135, states are not required to make a formal request, but instead, once a national emergency is declared, states and health care providers can submit requests for 1135 waiver authorization to the CMS Regional Office with a copy to the State Survey Agency. Requests can be made by sending an email to the CMS Regional Office in their service area. Information on the facility and justification for the request will be required. Further information on requesting an 1135 waiver can be found [here](#).
- [On March 17th Florida became the first state to receive 1135 waiver authority](#) following President Trump's declaration of a national emergency for COVID-19. CMS expects additional states will submit similar waiver requests in the coming days for this purpose.
- All 1135 waivers are terminated at the end of the national emergency period.