

Medicare Claims Processing Manual

Chapter 38 - Emergency Preparedness Fee-For-Service Guidance

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(Rev. 10135, 05-15-20)

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01 – Foreward

(Rev. 1784, Issued: 07-31-09, Effective: 08-31-09, Implementation: 08-31-09)

Generally, this chapter describes the guidance that may be implemented for the Medicare fee-for-service program in the event of a disaster/emergency. As part of its preparedness efforts for a disaster/emergency, the Centers for Medicare and Medicaid Services (CMS) has developed certain disaster/emergency guidance that may be implemented for the Medicare fee-for-service program in the event of a disaster/emergency. CMS has also developed certain additional disaster/emergency guidance that may be implemented if: 1. the President declares an emergency or disaster under the National Emergencies Act or the Stafford Act; and 2. the Secretary of the Department of Health and Human Services declares - under § 319 of the Public Health Service Act - that a public health emergency exists, and 3. the Secretary elects to waive one or more requirements of Title XVIII of the Social Security Act (Act) pursuant to § 1135 of such Act. Until CMS declares these guidances to be in effect, the guidances are considered to be pending.

10 – Use of the CR Modifier and DR Condition Code for Disaster/Emergency-Related Claims

(Rev. 2999, Issued; 07-25-14, Effective: 01-01-12, Implementation: 08-25-14)

In order to facilitate claims processing and track services and items provided to beneficiaries during disaster/emergency situations, a modifier and condition code have been established for providers to use on disaster/emergency related claims. The modifier and condition code have been in effect since August 21, 2005. The codes are effective for dates of service on and after August 21, 2005. The modifier and/or condition code can be used by providers submitting claims for beneficiaries who are emergency patients in any part of the country.

The DR Condition Code: The title of the DR condition code is “disaster related” and its definition requires it to be “used to identify claims that are or may be impacted by specific payer/health plan policies related to a national or regional disaster.” The DR condition code is used only for institutional billing, i.e., claims submitted by providers using the ASC X12 837 institutional claim format or on an institutional paper claim Form CMS-1450. In previous emergencies, use of the DR condition code has been discretionary with the billing provider or supplier. It no longer may be used at the provider or supplier’s discretion. Use of the DR condition code will be mandatory for any claim for which Medicare payment is conditioned on the presence of a “formal waiver,” as defined below. The DR condition code also may be required for any type of claim for which, at the A/B MAC (A)’s or (HHH)’s discretion or as directed by CMS in a particular disaster or emergency, the use of the DR condition code is needed to efficiently and effectively process claims or to otherwise administer the Medicare fee-for-service program.

The CR Modifier: Both the short and long descriptors of the CR modifier are “catastrophe/disaster related.” The CR modifier is used in relation to Part B items and services for both institutional and non-institutional billing. Non-institutional billing, i.e., claims submitted by “physicians and other suppliers”, are submitted either using the ASC X12 837 professional claim format or on a professional paper claim Form CMS-1500 or, for pharmacies, in the NCPDP format. In previous emergencies, use of the CR modifier has been discretionary with the billing provider or supplier. It no longer may be used at the provider or supplier’s discretion. Use of the CR modifier will be mandatory for applicable HCPCS codes on any claim for which Medicare Part B payment is conditioned on the presence of a “formal waiver,” as defined below. The CR modifier also may be required for any HCPCS code for which, at the A/B MAC (A)’s, (B)’s, or (HHH)’s or DME MAC’s discretion or as directed by CMS in a particular disaster or emergency, the use of the CR modifier is needed to efficiently and effectively process claims or to otherwise administer the Medicare fee-for-service program.

Formal Waivers: A “formal waiver” is a waiver of a program requirement that otherwise would apply by statute or regulation. There are two types of formal waivers. One type is a temporary waiver or modification of a requirement under the authority described in §1135 of the Social Security Act (the Act). Although Medicare payment rules themselves are not waivable under this statutory provision, the waiver authority under §1135 may permit Medicare payment in a circumstance where such payment would otherwise be barred because of noncompliance with the requirement being waived or modified. The second type of formal waiver is a waiver based on a provision of Title XVIII of the Act or its implementing regulations. The most commonly employed waiver in this latter category is the waiver of the “3-day qualifying hospital stay” requirement that is a precondition for Medicare payment for skilled nursing facility services. This requirement may be waived under §1812(f) of the Act.

Several conditions must be met for a §1135 waiver to be implemented. First, the President must declare an emergency or disaster under the National Emergencies Act or the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Such a declaration will specify both an effective date and the geographic area(s) covered by the declaration. Second, the Secretary of the Department of Health and Human Services must declare - under §319 of the Public Health Service Act - that a public health emergency exists within some or all of the areas covered by the Presidential declaration. Third, the Secretary must authorize the waiver of one or more requirements specified in §1135 of the Act. Fourth, the Secretary or the Administrator of CMS must determine which Medicare program requirements, if any, may be waived or modified under the Secretary’s authorization and whether specific conditions within the geographic area(s) specified by the Secretary’s declaration warrant waiver or modification of one or more requirements of Title XVIII of the Act. If all of the foregoing conditions are met, the Secretary or CMS Administrator may specify the extent to which a waiver or modification of a specific Medicare requirement is to be applied within the geographic area(s) with respect to which the waiver authority has been invoked.

The waiver of a Medicare requirement based on authority included in the provision of Title XVIII of the Act or its implementing regulations may be made at the discretion of the Administrator of CMS unless otherwise specified. Such a waiver does not require either a Presidential or a Secretarial declaration nor, if such declarations are made, would such a waiver be necessarily limited by the geographic boundaries specified in such declarations. Nevertheless, the Administrator may elect to limit the effect of “Title XVIII waivers” to such geographic areas and to such time frames as are specified by such declarations.

A Medicare requirement established in statute or regulation that is not subject to waiver under either of these types of “formal waiver” generally may not be waived as a matter of administrative discretion. Because most Medicare requirements are not “waivable,” nearly all Medicare entitlement, coverage, and payment rules will remain in effect during a disaster or emergency.

Informal Waivers: An “informal waiver” is a discretionary waiver or relaxation of a procedural norm, when such norm is not required by statute or regulation, but rather is reflected in CMS guidance or policy. Such norm may be waived or relaxed administratively if circumstances warrant. One example of such a norm would be claims filing jurisdiction. In the event of a disaster/emergency that impaired or limited operations at a particular Medicare Administrative Contractor (MAC), alternative claims filing jurisdictions could be established. Informal waivers are made by the CMS Administrator or his/her delegates.

Further Instructions in the Event of a Disaster or Emergency: In the event of a disaster or emergency, CMS will issue specific guidance to MACs via one or more Technical Direction Letter (TDL) that will contain a summary of the Secretary’s declaration (if any); specify the geographic areas affected by any declarations of a disaster or emergency; specify what formal waivers and/or informal waivers, if any, have been authorized; specify the beginning and end dates that apply to the use of the DR condition code and/or the CR modifier; and specify what other uses of the condition code and/or modifier, if any, will be mandatory for the particular disaster/emergency.

Reporting Utilization of the Condition Code and Modifier: MACs must compile reports of utilization of the use of the condition code and/or modifier as specified via any TDL as may be issued in the event of a specific disaster or emergency.

B. Policy:

The DR Condition Code:

- The DR condition code is used for institutional billing only.
- Use of the DR condition code is required when a service is affected by an emergency or disaster and Medicare payment for such service is conditioned on

the presence of a “formal waiver” (as that term is described in “Background”, above)

- Use of the DR condition code also may be required when either the A/B MAC (A) or (HHH) or CMS determine that such use is needed to efficiently and effectively process claims or to otherwise administer the Medicare fee-for-service program.
- The DR condition code is used at the claim level when all of the services/items billed on the claim are related to the emergency/disaster.

The CR Modifier:

- The CR modifier is used for Part B items and services only but may be used in either institutional or non-institutional billing.
- Use of the CR modifier is required when an item or service is impacted by an emergency or disaster and Medicare payment for such item or service is conditioned on the presence of a “formal waiver” (as that term is described in “Background”, above)

Use of the CR modifier also may be required when either the A/B MAC (A), (B), or (HHH), or DME MAC or CMS determine that such use is needed to efficiently and effectively process claims or to otherwise administer the Medicare fee-for-service program.

Transmittals Issued for this Chapter

Rev #	Issue Date	Subject	Impl Date	CR#
<u>R10135CP</u>	05/15/2020	Manual Update to Pub. 100-04, Chapter 38, to Remove Identification of Items or Services Related to the 2010 Oil Spill in the Gulf of Mexico Section	06/16/2020	11778
<u>R2999CP</u>	07/25/2014	Update to Pub. 100-04, Chapter 38 to Provide Language-Only Changes for Updating ASC X12	08/25/2014	8772
<u>R2021CP</u>	08/06/2010	National Modifier and Condition Code to Identify Items or Services Related to the 2010 Oil Spill in the Gulf of Mexico	01/03/2011	7087
<u>R1784CP</u>	07/31/2009	The Use of the CR Modifier and DR Condition Code on Disaster/Emergency Related Claims-Initial release of chapter	08/31/2009	6451

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