



Hart Health  
Strategies Inc.

## Public Health Emergencies and Major Disaster Declarations

### Public Health Emergency Determination

On January 31, 2020, U.S. Department of Health and Human Services (HHS) Secretary Alex Azar [determined](#) that a public health emergency existed because of confirmed cases of the coronavirus disease (COVID-19) under the authority granted by section 319 of the Public Health Service Act (PHSA). The nationwide determination took effect January 27, 2020.

Once it is determined that a public health emergency exists, the Secretary is authorized to respond through making grants; entering into contracts; and conducting and supporting investigations into the cause, treatment, or prevention of the disease or disorder. The Secretary may also use funds from the Public Health Emergency Fund when appropriations exist to immediately respond to the emergency. Finally, the secretary has the authority to grant extensions or waive sanctions relating to submission of data or reports required under HHS laws, when the Secretary determines that as a result of the emergency, individuals or public or private entities are unable to comply with deadlines for such data or reports.

A public health emergency determination is a necessary step to enable the Secretary to take a variety of other discretionary actions to respond to the emergency, including:

- Adjusting Medicare reimbursement for certain Part B drugs;
- Enabling the Centers for Disease Control and Prevention (CDC) to access to Infectious Diseases Rapid Response Reserve Fund;
- Waiving certain Ryan White HIV/AIDS grant program requirements;
- Making temporary (up to one year or the duration of the emergency) appointments of personnel;
- Modifying the practice of telemedicine;
- Enabling the Secretary of Defense to deploy military trauma care providers;
- Granting an extension or waiving application deadlines or compliance with any other requirements of certain Substance Abuse and Mental Health Services Administration (SAMHSA) grants;
- Allowing state and local governments to access the General Services Administration (GSA) federal supply schedule when using federal grant funds;
- Temporarily reassigning state and local personnel;
- Limiting liability of health care professionals who are members of the Medical Reserve Corps or professionals included in the Emergency System for Advance Registration of Volunteer Health Professionals responding to the emergency in the initial 90 days;
- Determining a waiver of Paperwork Reduction Act (PRA) requirements is necessary;
- Waiving certain requirements of the Drug Supply Chain Security Act (DSCSA); and
- Allowing the Department of Labor (DOL) to issue dislocated worker program grants for disaster relief employment.

A Section 319 determination remains in effect for 90 days or until the Secretary determines that the emergency no longer exists, whichever occurs first; the Secretary may renew the determination for additional 90-day periods.

## Stafford Act Declaration

On March 13, 2020, President Donald Trump [declared](#) the ongoing COVID-19 pandemic a national emergency under the Stafford Act.

A public health emergency determination and a Presidential declaration of an emergency or disaster under the Stafford Act are distinct and separate declarations. The Stafford Act authorizes the President to provide financial and other assistance to state, local, and tribal governments, certain private nonprofit organizations, and individuals to support response, recovery, and mitigation efforts following a Presidential emergency or disaster declaration. The Act directs the Federal Emergency Management Agency (FEMA) to coordinate administration of disaster relief to the states.

A presidential declaration under the Stafford Act enables access to disaster relief assistance and funds appropriated by Congress. The Disaster Relief Fund has several billion dollars immediately available for the emergency needs of state and local governments, but its use is limited to purposes specifically authorized in statute. The presidential declaration specifies the types of assistance authorized. Different types of assistance are authorized by the Stafford Act. Assistance can take the form of direct federal aid in terms of services, grants, and technical support, or as reimbursement for services provided by or contracted for by affected states.

## National Emergency Declaration

Under the emergency declaration, there are key authorities for FEMA and the Small Business Administration (SBA).

### FEMA

There are two types of disaster declarations provided for in the Stafford Act – emergency declarations and major disaster declarations. Both types authorize the President to provide supplemental federal disaster assistance, but the type and amount of assistance differ. Under emergency declarations, the following types of assistance are available through FEMA:

**Public Assistance (PA):** Only Categories A (debris removal) and B (emergency protective measures) may be authorized under an emergency declaration. Categories C-G (see below) are not available under an emergency declaration. Emergency declarations often include only Category B. This assistance is generally provided on a 75 percent federal, 25 percent non-federal cost sharing basis.

**Individual Assistance (IA):** The Individuals and Households Program (IHP) is the only form of IA that may be authorized under an emergency declaration. Authorization of IHP under an emergency is rare. Housing assistance under IHP is provided at a 100 percent federal share, while other needs assistance under IHP requires a 25 percent non-federal cost share.

### SBA

The declaration allows the SBA to make available Economic Injury Disaster Loans. The SBA will work directly with state governors to provide targeted, low-interest loans to small businesses and non-profits that have been severely impacted by COVID-19. The SBA's Economic Injury Disaster Loan program provides small businesses with working capital loans of up to \$2 million to help respond to the temporary loss of revenue they are experiencing.

## **Major Disaster Declaration**

The President may declare a major disaster for any event that the President believes has caused damage of such severity that it is beyond the combined capabilities of state and local governments to respond. A major disaster declaration provides a wide range of federal assistance programs for individuals and public infrastructure, including funds for both emergency and permanent work. Under major disaster declarations, the following types of assistance are available; however, not all programs are activated for every disaster.

On March 20, President Trump declared a major disaster for the state of [New York](#).

**Public Assistance (PA)** to state, tribal, and local governments and certain private nonprofit organizations for emergency work and the repair or replacement of disaster-damaged facilities, which may include the following Categories:

- A - Debris removal;
- B - Emergency protective measures;
- C – Roads and bridges;
- D – Water control facilities;
- E – Buildings and equipment;
- F – Utilities; and
- G – Parks, recreational and other facilities.

**Individual Assistance (IA)** to individuals and households, which may include Individuals and Households Program (IHP); Crisis Counseling Program; Disaster Case Management; Disaster Unemployment Assistance; Disaster Legal Services; and Disaster Supplemental Nutrition Assistance Program.

**Hazard Mitigation** to state, tribal, and local governments and certain private nonprofit organizations for actions taken to prevent or reduce long term risk to life and property from natural hazards. Hazard mitigation assistance is available for major disasters but not emergencies under the Stafford Act.

In his national emergency declaration, the President stated his belief that “the disaster is of such severity and magnitude nationwide that requests for a declaration of a major disaster” may be appropriate.

## **Section 1135 Waiver Authority**

In order for the Secretary to exercise his waiver authority under section 1135 of the SSA to temporarily waive or modify certain Medicare, Medicaid, CHIP, and HIPAA Privacy rule requirements, there must be a public health emergency determination in place, as well as a Presidential declaration of a major disaster or emergency pursuant to the Stafford Act. Under section 1135 of the SSA, the following Medicare, Medicaid, CHIP, and HIPAA Privacy Rule requirements may be waived or modified:

- Certain conditions of participation, certification requirements, program participation, or similar requirements for individual health care providers or types of health care providers, and pre-approval requirements;
- Requirements that physicians and other health care professionals hold licenses in the state in which they provide services if they have a license from another state and are not affirmatively barred from practice in that state or any state in the emergency area;
- Sanctions under the Emergency Medical Treatment and Labor Act (EMTALA) for direction or relocation of an individual to another location to receive medical screening pursuant to an appropriate state emergency preparedness plan or a state pandemic preparedness plan or for the transfer of an individual who has not

- been stabilized if the transfer is necessitated by the circumstances of the declared federal public health emergency;
- Sanctions under section 1877(g) (Stark) relating to limitations on physician referral under such conditions and in such circumstances as the Centers for Medicare and Medicaid Services (CMS) determines appropriate;
  - Deadlines and timetables for performance of required activities to allow timing of such deadlines to be modified;
  - Limitations on payments for health care items and services to permit Medicare Advantage plan enrollees to use out-of-network providers in an emergency situation; and
  - Sanctions and penalties arising from noncompliance with HIPAA privacy regulations relating to: a) obtaining a patient's agreement to speak with family members or friends or honoring a patient's request to opt out of the facility directory; b) distributing a notice of privacy practices; or c) the patient's right to request privacy restrictions or confidential communications.

Waivers or modifications under section 1135 of the SSA may be retroactive to the beginning of the emergency period (or to any subsequent date). The waiver or modification terminates either upon termination of the emergency period or 60 days after the waiver or modification is first published (subject to 60-day renewal periods until termination of the emergency).

On March 13, 2020, Secretary Azar made the decision to retroactively waive the above requirements and regulations effective March 1, 2020.

## Sources

[FEMA: The Disaster Declaration Process](#)

[FEMA: The Disaster Declaration Process Fact Sheet](#)

[ASTHO: Robert T. Stafford Disaster Relief and Emergency Assistance Act](#)

[CDC: Selected Federal Legal Authorities Pertinent to Public Health Emergencies](#)

[HHS: Public Health Emergency Declaration Q&As](#)