

MEMORANDUM

To: ACRM
From: Peter Thomas, Steve Postal and Jill O'Brien
Date: September 7, 2017
Re: Regulatory Relief for Health Care Providers Serving Patients Affected by Hurricane Harvey

SUMMARY

In response to Hurricane Harvey, the Department of Health and Human Services (HHS), the Centers for Medicare and Medicaid Services (CMS) and private insurers¹ are offering regulatory relief to health care providers to ensure that individuals affected by the storm can access the care and services they need. Shortly after the storm began, HHS Secretary Tom Price declared a public health emergency in [Texas](#) and [Louisiana](#). Secretary Price also authorized Social Security Act (SSA) waivers for Texas and Louisiana allowing CMS to reduce the regulatory burden on providers that serve Medicare, Medicaid and State Children's Health Insurance Program (CHIP) beneficiaries.

This document contains information and resources related to regulatory relief for health care providers and facilities in areas affected by Hurricane Harvey, particularly for providers that serve Medicare beneficiaries and people with disabilities.

Under [Section 1135](#) of the Social Security Act, CMS can reduce regulatory requirements for providers that serve individuals affected by natural disasters such as Hurricane Harvey. Section 1135(b) waivers are issued to ensure health care items and services are available to meet the needs of individuals enrolled in Medicare, Medicaid and CHIP programs during public health emergencies. These waivers also ensure that CMS reimburses health care practitioners and facilities, which are expected to provide such services and care but may be unable to comply with regulatory requirements due to Hurricane Harvey.

Section 1135(b) waivers exempt certain providers and facilities from certain Medicare, Medicaid and CHIP rules and requirements such as coverage requirements and regulations, out of state licensing rules, self-referral sanctions and requirements under the rules of HIPAA and the Emergency Medical Treatment and Labor Act (EMTALA). In most cases, facilities must request these waivers. However, CMS has issued blanket waivers for certain types of facilities in affected areas of Texas. Under Section 1135, CMS has also [extended](#) the deadlines for the

¹ According to a Politico [article](#), private insurers including Cigna and Blue Cross and Blue Shield of Texas plan to waive out-of-network penalties, extend claim-filing deadlines and pre-authorize payments for prescription drugs and medical supplies for customers.

Medicare Geographic Classification Review Board (MGCRB) Applications and Inpatient Prospective Payment System (IPPS) Wage Index Revisions for FY 2019 from September 1, 2017 to October 2, 2017 for the States of Louisiana and Texas.

Social Security Act waivers are still in place in Texas and Louisiana. Certain provisions covered under the SSA waivers, such as the HIPAA provisions, will be terminated fairly quickly. The regulatory relief provisions are expected to remain in place over the coming weeks and months. Below please find links to the full text of the Social Security Act waivers issued by Secretary Price for Texas and Louisiana.

[August 26, 2017, Texas Social Security Act Waiver](#)

- Retroactive effect date beginning August 25, 2017

[August 28, 2017, Louisiana Social Security Act Waiver](#)

- Retroactive effect date beginning August 26, 2017

INFORMATION FOR PROVIDERS SERVING MEDICARE BENEFICIARIES

CMS lists a variety of resources for providers on its [Emergency Response and Recovery Webpage](#). Below is a summary of information and resources listed on that page that may be relevant to providers that serve Medicare beneficiaries in areas affected by Hurricane Harvey.

For up to date information relating to CMS' response, go to the [CMS.gov Hurricane Harvey webpage](#).

Requesting an 1135 Waiver ([Link](#))

Individual Healthcare Providers Can Ask for Assistance or a Waiver. Once an 1135 waiver is authorized, health care providers can submit requests to operate under that authority or for other relief that may be possible outside the authority to either the State Survey Agency or CMS Regional Office. Providers can submit requests by emailing the CMS Regional Office in their service area, or by calling the State or CMS Regional Office.

- RODALDSC@cms.hhs.gov (Dallas RO): Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

Facilities. Health care facilities affected by Hurricane Harvey should go to www.qualitynet.org to review the process for submitting an Extraordinary Circumstances Exception request or an extension request for submitting quality data as part of their respective quality reporting programs.

CMS Blanket Waivers Issued During Hurricane Harvey for Health Care Facilities in Texas

Under Section 1135(b) of the Social Security Act, CMS has already issued several blanket waivers for health care facilities in impacted counties and geographical areas of Texas. CMS is currently reviewing multiple waiver requests and will post additional waivers on the [CMS "Hurricanes" webpage](#). Individual facilities in Texas do not need to apply for the following approved blanket waivers:

- Skilled Nursing Facilities
 - 1812(f): This waiver of the requirement for a 3-day prior hospitalization for coverage of a skilled nursing facility (SNF) stay provides temporary emergency coverage of SNF services without a qualifying hospital stay, for those people who are evacuated, transferred, or otherwise dislocated as a result of the effect of Hurricane Harvey in the State of Texas in 2017. In addition, for certain beneficiaries who recently exhausted their SNF benefits, it authorizes renewed SNF coverage without first having to start a new benefit period. (Blanket waiver for all impacted facilities)
 - 483.20: This waiver provides relief to skilled nursing facilities (SNFs) on the timeframe requirements for Minimum Data Set assessments and transmission. (Blanket waiver for all impacted facilities)

- Home Health Agencies
 - 484.20(c)(1): This waiver provides relief to home health agencies (HHAs) on the timeframes related to OASIS Transmission. (Blanket waiver for all impacted agencies)

- Critical Access Hospitals
 - This action waives the requirements that critical access hospitals limit the number of beds to 25, and that the length of stay be limited to 96 hours. (Blanket waiver for all impacted hospitals)

These temporary emergency policies apply to the timeframes specified in the waiver(s) issued under section 1135 of the Act in connection with the effect of Hurricane Harvey in the State of Texas.

Medicare Fee-For-Service Disaster Related Policies that May be Implemented only with a § 1135 Waiver

- Inpatient Rehabilitation Hospitals and Units (IRFs)
 - CMS has not yet issued blanket waivers for IRFs affected by Hurricane Harvey. However, CMS does provide a Question and Answer document identifying policies and procedures that may be available when the Section 1135 Waiver authority is invoked:

[Medicare Fee-For-Service Additional Emergency and Disaster-Related Policies and Procedures That May Be Implemented Only With a § 1135 Waiver \(Q&A\)](#)

Sections Relevant to IRFs (p. 22):

- **Question:** If an inpatient rehabilitation facility (IRF) admits a patient solely in order to meet the demands of an emergency, will the patient be included in the hospital's or unit's inpatient population for purposes of calculating the applicable compliance thresholds at 42 CFR §412.29(b) ("the 60 percent rule")?
- **Answer:** In order to meet the demands of an emergency, when an applicable § 1135 waiver is in effect, CMS can modify enforcement of the requirements specified in 42 CFR § 412.29(b), which is the regulation commonly referred to as the "60 percent rule." Additional information regarding these requirements can be found in Chapter 3, Section 140.1.3 of the Medicare Claims Processing Manual (Pub. 100-04). If an IRF admits a patient solely to respond to the emergency and the patient's medical record properly identifies the patient as such, the patient will not be included in the hospital's or unit's inpatient population for purposes of calculating the applicable compliance thresholds outlined in § 412.29(b). In the case of an admission that is made solely to meet the demands of the emergency, a facility should clearly identify in the inpatient's medical record that the patient is being admitted solely to meet the demands of the emergency. In addition, during the applicable waiver time period, we would also apply the exception to facilities not yet classified as IRFs, but that are attempting to obtain classification as an IRF.

An institutional provider that has been granted a § 1135 waiver would use the "CR" (catastrophic/disaster related) modifier to designate any service line item on the claim that is disaster/emergency related. If all of the services on the claim are disaster/emergency related, the institutional provider with a § 1135 waiver would use the "DR" (disaster related) condition code to indicate that the entire claim is disaster/emergency related. The IRF granted a § 1135 waiver must annotate all Medicare fee-for-service claims affected by the emergency with the "DR" condition code or the "CR" modifier, as applicable, for the period that the IRF is granted the waiver.

- **Question:** Would Medicare coverage requirements for inpatient rehabilitation facilities (IRFs) found in §412.622(a)(3), (4), and (5), and in Chapter 1, Section 110 of the Medicare Benefit Policy Manual (Pub. 100-02), such as the intensive rehabilitation therapy services requirement be temporarily suspended during a §1135 waiver period?
- **Answer:** In general, Medicare coverage or payment rules cannot be waived, even in a disaster or emergency. In the event that an emergency/disaster occurs affecting a Medicare Certified IRF, CMS would expect the IRF to continue to meet Medicare coverage criteria found in § 412.622(a)(3), (4), and (5), and in Chapter 1, Section 110 of the Medicare Benefit Policy Manual (Pub. 100-02). However, if after the emergency/disaster, an IRF believes that it should be exempt from meeting certain requirements, it can submit an § 1135 waiver form. CMS will review each waiver request and make a determination on a case-by-case basis.

OTHER RESOURCES

FEMA: [Hurricane Harvey Resources for People with Disabilities, Access & Functional Needs](#)

HHS: [Office of the Assistant Secretary for Preparedness and Response, Hurricane Harvey 2017](#)

HHS: [Hurricane Harvey Response: OCR Identifies Practices and Resources for Emergency Responders/Officials to Help Ensure Individuals Have Equal Access to Emergency Services](#)